

MARTHA HART, et al., -vs-

WORLD WRESTLING FEDERATION, et al.

MARK SWALES

APRIL 10, 2000

JOHN M. BOWEN & ASSOCIATES - (816) 421-2876

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY

MARTHA HART, et al.,)
)
Plaintiffs,)
)
vs.) No. CV99-210774
)
WORLD WRESTLING FEDERATION,)
et al.,)
)
Defendants.)

THE VIDEOTAPED DEPOSITION OF MARK SWALES,
produced, sworn and examined on behalf of the
Plaintiffs, pursuant to Notice, between the hours
of eight o'clock in the forenoon and six o'clock in
the afternoon of Monday, April 10, 2000, at the law
offices of Bryan Cave, 33 Cannon Street, Suite 600,
in the City of London, England, before me,

SANDRA A. MILLER, C.C.E.
of
JOHN M. BOWEN & ASSOCIATES,
Shorthand Reporters,

a Notary Public in a certain cause now pending in
the Circuit Court of Jackson County, Missouri, wherein
MARTHA HART, et al., are the Plaintiffs, and WORLD
WRESTLING FEDERATION, et al., are the Defendants.

Appearances:

For the Plaintiffs: Robb & Robb, LLC
3900 One Kansas City Place
1200 Main Street
Kansas City, Missouri 64105
By Mr. Cary C. Robb

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STIPULATIONS

It is hereby stipulated and agreed by and
between counsel for the respective parties and the
witness that presentment of this deposition to
this witness is hereby waived.

It is hereby further stipulated and agreed
by and between the respective parties hereto that
said deposition shall be signed by the witness
before the time of trial of this case.

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By Mr. John M. Waldeck

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For the Defendant
City of Kansas City,
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By Mr. Bradley S. Russell

Also present: David Lombardo, Videographer

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1 It is hereby further stipulated and agreed
2 by and between counsel for the respective parties
3 hereto, that the deposition of the witness may be
4 signed before a Notary Public other than the
5 Notary before whom the deposition was taken.
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1 responsive documents then we think they should
2 be produced. If not, then we can explore that
3 with the witnesses today.
4 MR. ROBB: Anybody else before we go
5 on the video? I didn't mean to interrupt you.
6 I just thought we would save the video. I'm not
7 sure how much it has.
8 (Off the record).
9 MARK SWALES
10 of lawful age, being produced and sworn to tell the
11 truth, the whole truth and nothing but the truth,
12 deposeth and saith:
13 EXAMINATION
14 By MR. ROBB:
15 Q. Good morning.
16 A. Good morning.
17 Q. Would you tell us your full name, please, sir.
18 A. John Mark Swales.
19 Q. And what is your employment, Mr. Swales?
20 A. I am finance director of Lewmar Limited.
21 Q. Where is Lewmar Limited located?
22 A. In Havent England.
23 Q. Havant, Hampshire, England?
24 A. Yes.
25 Q. And are we going forward with this proceeding

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1 this morning on April 10, 2000, in London,
2 England?
3 A. Yes, we are.
4 Q. All right, sir. I'd like to ask you a few
5 questions concerning your company, and I
6 understand that you have been designated on
7 certain areas with respect to and to speak on
8 behalf of Lewmar. Is that correct?
9 A. That's correct, sir.
10 Q. All right. Generally speaking, would those
11 matters be involving finance and administrative
12 details with respect to the Lewmar Company?
13 A. That is correct.
14 Q. Okay. Mr. Swales, my name is Gary Robb, and
15 along with my co-counsel here, Pam Fischer, we
16 represent the Hart family in connection with a
17 matter that occurred on May 23, 1999, at Kemper
18 Arena in Kansas City, Missouri.
19 And did Lewmar Limited manufacture or
20 produce to the best of your knowledge a snap
21 shackle device which you have information was
22 used as part of rigging for a wrestling show
23 involving Owen Hart on that date?
24 A. We don't know precisely what happened on that
25 date. We have only seen photograph evidence.

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1 It does appear that it was one of our snap
2 shackles, yes.
3 Q. And I apologize if I wasn't clear. I didn't
4 mean to imply that you did know exactly what
5 happened. But I think what I'd like to at least
6 establish is that to the best of your knowledge
7 from information that you have, Mr. Swales, does
8 it appear to you on behalf of Lewmar Limited
9 that one of your snap shackle devices in some
10 manner was part of the rigging apparatus for the
11 stunt?
12 A. Yes, it is, sir.
13 Q. Well, that's what I'm here to talk about, but
14 before we get into that specifically, could I
15 ask you to tell us a little bit about your
16 company, Lewmar.
17 A. Lewmar Limited manufactures deck hardware,
18 largely for sailboats.
19 Q. Did you say for sailboats?
20 A. Yes. We do three main ranges, which is the
21 winch, windlass, which basically you would use
22 to hoist a sail or adjust your sails. We do
23 hatches and we do deck hardware, which is the
24 pulley blocks used to loop around. Formed in
25 around 1946 to '47, we are one of the leading

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1 suppliers of deck hardware. Prominent position
2 in the winch and hatch markets.
3 Q. Would it be correct, Mr. Swales, that the
4 predominant, if not entire, focus of your sales
5 is within the marine industry?
6 A. Yes, it would.
7 Q. Okay. So to whom do you sell your products
8 predominantly then, sir?
9 A. The bulk of our products are sold to the OEM's,
10 to the boat manufacturers. We also sell through
11 distributors and ultimately to the end user, to
12 the sailor.
13 (The reporter marked Deposition
14 Exhibit No. 10 for identification.)
15 Q. (By Mr. Robb) Mr. Swales, let me show you what
16 I'm going to -- I am going to mark this later,
17 but let's refer to this as Exhibit 10.
18 A. Okay.
19 Q. Because I don't want to block it. But I want to
20 show you what I intend to mark as Exhibit 10,
21 and I'm going to ask if you could identify this
22 object, if you wouldn't mind. And I want to
23 make clear that I don't mean to get into any of
24 the technical or production details because I
25 understand, or the engineering details, because

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1 I understand that Mr. Gibson is going to be
2 addressing those.
3 A. That's correct.
4 Q. But I would like to ask if you can identify this
5 object.
6 A. Yes. This is one of the Lewmar trigger latch
7 shackles.
8 Q. Okay. Would it also be referred to as a snap
9 shackle or trigger latch?
10 A. It's a trigger latch. A snap shackle is a
11 generic phrase for any number of styles of
12 shackle.
13 Q. What is that used for, sir?
14 A. This shackle is particularly used for opening
15 under load. It's designed to open under load,
16 and it would be used on the spinnaker of a
17 racing sailboat.
18 Q. Now, did you say open under load?
19 A. Yes.
20 Q. To open under load?
21 A. Yes.
22 Q. And I don't want to get overly technical, but
23 just in a very simple fashion could you explain
24 to the jury what that means?
25 A. It means that if you are -- if you see a

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1 sailboat racing with a spinnaker.
2 Q. What is a spinnaker?
3 A. Right. I'm not a sailor. I will make that
4 clear as well. A spinnaker is what the sailor
5 would use at the front of the yacht, which will
6 come out both --
7 Q. In the front of the yacht?
8 A. Front of the yacht. When you are turning the
9 yacht, you need to take that down quickly if
10 you're racing, so the shackle is released under
11 load, so it can be removed quickly out of the
12 way to get under wind to sail on.
13 Q. Now, how is it affixed with, or how is it
14 attached or opened before a load is applied to
15 the instrument, sir?
16 A. You can open it by putting -- if it's not under
17 load, you can open it by putting your finger in
18 here and releasing it or by pulling this plunger
19 and releasing it. If it's under load, there's a
20 sign under it that says use spike, which is a
21 metal rod you put in here to press down.
22 (The reporter marked Deposition
23 Exhibit No. 78 for identification.)
24 Q. (By Mr. Robb) All right. Let me show you what
25 we intend to be marked Exhibit 78, and ask you,

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1 Mr. Swales, is this the spike that you referred
2 to --
3 A. That is what we --
4 Q. -- ten seconds ago.
5 A. Yes. That is what we call a fid, yes.
6 MR. HARRIS: Just for the record,
7 make sure Mr. Robb completes his question before
8 you respond.
9 A. Yes. You put it in and release it.
10 Q. (By Mr. Robb) Is the intent or design generally
11 speaking, Mr. Swales, of the spike to keep one's
12 hands away from the instrument under load?
13 A. Yes, it is.
14 Q. And why is that?
15 A. Because when it's under load there is very
16 little pressure here, and things can fly back,
17 and also the arm can flick and cut your fingers.
18 Q. Have you seen that trigger latch device used in
19 the yachting application?
20 A. I have not.
21 Q. Have you ever personally observed with your own
22 eyes this particular product being used in any
23 other application?
24 A. I have not.
25 (The reporter marked Deposition

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1 Exhibit No. 29 for identification.)
2 Q. (By Mr. Thompson) Let me show you, Mr. Swales,
3 what I have marked and what you have provided.
4 It's Exhibit 29. And ask if you can identify
5 that for us please, sir.
6 A. That's a copy of the 1998 Lewmar catalog.
7 Q. And does it have reference to Exhibit 10, sir?
8 A. Yes, it does.
9 Q. And would you hold it so that the camera can see
10 the reference, and point out to the specific one
11 that we are talking about.
12 A. (Witness complies.) I believe it is this one.
13 Q. Okay. And what is the reference on that
14 exhibit, sir?
15 A. 19512000.
16 Q. And that is the catalog number for the part?
17 A. Yes.
18 Q. And on the first page of the catalog, could you
19 hold that up for the camera as well. And it
20 indicates the company name -- well, first at the
21 top it has the date, 1998?
22 A. Yes.
23 Q. And then the company name, and I don't know if
24 our camera can get it, but can you read what it
25 says underneath your company's name, sir?

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1 A. Marine equipment for the world's yachts.
2 Q. Marine equipment for the world's yachts?
3 A. That is correct.
4 Q. All right. Mr. Swales, have you or anyone else
5 within the Lewmar Company ever indicated in a
6 catalog, an advertisement or any promotional
7 material that this product can be used for a
8 stunt?
9 A. We most certainly have not.
10 Q. Would you have known about that, sir, if there
11 had been any indication to that effect?
12 A. I would have.
13 Q. In fact, the contrary is true, is it not, sir?
14 MR. THOMPSON: I object to the form
15 of the question.
16 A. Sorry. Could you explain?
17 Q. (By Mr. Robb) Certainly. In fact, your company
18 has made it very clear that these products are
19 not to be used outside of marine application,
20 have you not?
21 MR. THOMPSON: I object to the form
22 of the question.
23 A. That is correct, sir.
24 Q. (By Mr. Robb) And have you sent out memoranda
25 and other public information disseminated to

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1 that effect?
2 A. We have, sir.
3 Q. Have you ever in any written material condoned
4 or ratified or approved the use of this device
5 in any kind of a stunt, any kind of a stunt?
6 A. We have not, sir.
7 Q. Would you know about that, sir?
8 A. Yes, I would.
9 Q. Are you in a position, in terms of your position
10 with the Lewmar Company, to know or to be
11 notified if anyone would ask for permission or
12 approval to use it in that way?
13 A. Yes, I am.
14 Q. If they had, what would have been your company's
15 response, sir?
16 MR. THOMPSON: I object to the form
17 of the question.
18 A. We would absolutely decline permission to use
19 it. We would have made it very clear that this
20 object, this product, is not designed for that
21 purpose.
22 Q. (By Mr. Robb) You say not designed for that
23 purpose?
24 A. That's correct.
25 Q. Was it originally designed for any application

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1 to lift or lower or suspend, lift, lower or
2 suspend, a human being at any height, sir?
3 A. It absolutely was not, sir.
4 (The reporter marked Deposition
5 Exhibits Nos. 30 and 31 for
6 identification.)
7 Q. (By Mr. Thompson) in that regard, let me show
8 you what has been marked as Plaintiff's Exhibit
9 31, and do you recognize this, sir, as the
10 original copy of the European Patent Application
11 No. 93-300953.5 dated September 20, 1988,
12 approving the application for patent of the
13 shackle?
14 A. Yes, it is, sir.
15 Q. I'm sorry?
16 A. Yes.
17 Q. And I want to bring to your attention the third
18 paragraph of the patent application, and if you
19 could just take a moment and take your time to
20 familiarize yourself with that third paragraph.
21 Let me know when you have had a chance to review
22 it.
23 A. (Witness complies). Okay.
24 Q. Mr. Swales, could I trouble you to read that
25 third paragraph for me, if that would be all

Page 20

1 right.
2 MR. HARRIS: That's fine.
3 A. These shackles are used especially in the marine
4 sports, such as yachting, and it has become
5 important to develop a capacity for automatic
6 self-latching, which is entirely secure but
7 easily released when necessary.
8 Q. (By Mr. Robb) Anywhere, anywhere in that patent
9 application, Mr. Swales, is there any reference
10 to the use of that instrument in stunt work?
11 MR. THOMPSON: I object to the form
12 of the question. The document speaks for
13 itself.
14 A. I am not aware that it does.
15 Q. (By Mr. Robb) Please satisfy yourself whether
16 or not it does.
17 A. No, sir, it does not.
18 Q. You said it does not?
19 A. No.
20 Q. Just so I'm clear, is there any reference in any
21 portion of the original patent application that
22 this product can or was envisioned for use in
23 any type of stunt?
24 MR. THOMPSON: I object to the form
25 of the question. The document speaks for

Page 21

1 itself, and it has been used, and has been asked
2 and answered.
3 Q. (By Mr. Robb) I just want to make sure, sir.
4 A. It has not.
5 Q. Has there been, to your knowledge, any
6 subsequent patent application to seek to have
7 this particular instrument, this trigger latch
8 device which your company produces used in the
9 stunt industry?
10 A. Not to my knowledge sir.
11 Q. And you would be in a position to know, would
12 you not?
13 A. Yes, I would.
14 Q. Now, let me show you what we have marked as
15 Exhibit 30, and can you identify that for us,
16 sir.
17 A. This is from the Lewmar 1999 catalog.
18 Q. You say the 1999?
19 A. Yes.
20 Q. Okay. And can you for a moment hold up for our
21 camera the front page of that catalog.
22 A. (Witness complies).
23 Q. Now, that is from the 1999 catalog?
24 A. Yes, sir.
25 Q. And again, would you read what the indication is

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1 with respect to your product line, sir.
2 A. Marine equipment for the world's yachts.
3 Q. And is there attached to the cover page another
4 document?
5 A. Yes, there is, sir.
6 Q. And is there any reference to the trigger latch
7 device on the attached document?
8 A. Sorry, to this trigger latch?
9 Q. Yes.
10 A. There is no reference here to the Lewmar trigger
11 latch shackle.
12 Q. On the attachment there.
13 A. No. These are Nordsman Gibb shackles, not
14 Lewmar.
15 Q. In the 1999 catalog there is also reference to
16 this trigger latch, is there not?
17 A. Yes. Sorry. It's here.
18 Q. Okay. And that's on the bottom of the sheet?
19 A. Yes.
20 Q. So let me just put that again to you,
21 Mr. Swales. The attachment to this Exhibit 30,
22 the page attached, does make reference to the
23 trigger latch shackle manufactured by Lewmar
24 which we have been discussing, does it not?
25 A. Yes, it does.

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1 Q. And does it give any indication that this
2 particular product can be used as part of the
3 rigging, I'm sorry, as part of the rigging of a
4 stunt?
5 A. No, it does not.
6 (The reporter marked Deposition
7 Exhibits Nos. 124 through 126 for
8 identification.)
9 Q. (By Mr. Robb) Let me show you what has been
10 marked as Exhibit 124, and ask if you are
11 familiar with that document, sir.
12 A. I am familiar with it, sir.
13 Q. And what was the purpose of issuing that
14 memorandum, Mr. Swales?
15 A. A company in Germany had used one of our trigger
16 latch shackles in some way -- well, sorry. We
17 believe one of our shackles, we are not sure
18 whether it was a trigger latch or plunger
19 shackle, and it was something to do with an
20 elasticated bungee jump, and we issued this to
21 our branch in Holland, which had sold the
22 shackles through third parties to whoever did
23 this stunt, informing them they should not be
24 doing that, and to pass it down the line that
25 the shackles are not designed for that kind of

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1 purpose.
2 Q. Prior to the issuance of this memorandum,
3 Mr. Swales, had Lewmar or anyone on behalf of
4 Lewmar indicated that Lewmar approved or
5 ratified the use of any of their products in
6 bungee jumping?
7 A. Certainly not.
8 Q. If anyone had called you or someone at Lewmar
9 and said we want to use this or some other latch
10 in a bungee jump, would you have said sure?
11 A. We certainly would not.
12 Q. Would not?
13 A. No.
14 Q. Why not?
15 A. I'm tempted to say lunacy to do it, but I
16 wouldn't do a bungee jump either. It is not
17 designed for that kind of purpose.
18 Q. Now, when you found out that it had been used in
19 that manner, Mr. Swales, did the company take
20 action?
21 MR. THOMPSON: I object to the form
22 of the question.
23 A. We took action since we stopped our agent
24 supplying those. We never found out the full
25 details of what happened. All we had had was a

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1 phone call, I believe, from the German police.
2 And there was never a claim and as I said we
3 weren't absolutely certain which of our products
4 they had used.
5 Q. You sell to the marine industry?
6 A. Yes, sir.
7 Q. Products for marine application?
8 A. Yes, sir.
9 Q. And Mr. Swales, you nor any other manufacturer
10 can possibly police as best you can the use to
11 which people may improperly make of your
12 product, can you, sir?
13 MR. THOMPSON: I object to the form
14 of the question.
15 MR. SULLIVAN: Join in that
16 objection. Gary, can we agree that objections
17 for one stand for all?
18 MR. ROBB: Certainly. We had that
19 for all.
20 MR. THOMPSON: Does the camera
21 include this? I think the proper way is focus
22 it on the witness. We have had this battle
23 before. The rules in Missouri are clear. The
24 videographer --
25 MR. ROBB: If you have an objection,

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1 make it.
2 MR. THOMPSON: That is the objection.
3 MR. ROBB: Go ahead and proceed,
4 David, in the manner to which you feel is
5 appropriate. Let's have the original question
6 put back to the witness, so we can have a clear
7 record.
8 MR. ROBB: Before you do, sorry. To
9 the extent I am holding a exhibit and asking him
10 to hold it making reference to an exhibit, I
11 certainly want the exhibit shown. You know, if,
12 God forbid, if I'm in the video, then sobeit.
13 Go ahead and proceed.
14 MR. THOMPSON: To that extent I
15 understand that.
16 (The reporter read back the following:
17 And Mr. Swales, you nor any other manufacturer
18 can possibly police as best you can the use to
19 which people may improperly make of your product,
20 can you, sir?)
21 A. It would be impossible for us to police the use.
22 MR. THOMPSON: Same objection.
23 MR. ROBB: Well, now, Bob, there is
24 no reason to do that. You already made the
25 objection. The objection was clear, fine. And

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1 to interrupt him, you know, is just not going to
2 be a good record if we have to edit it. You are
3 over him. I can't work it that way. So go
4 ahead and make the objection. Take as much time
5 as you like. Then I would ask -- I had her read
6 it back subject to the objection.
7 MR. THOMPSON: I didn't know it was
8 subject to the objection. As long as we have
9 that agreement.
10 MR. ROBB: Certainly, absolutely.
11 Let's try it again. Part of that is my fault,
12 because I may not have made it clear that it was
13 subject to the objection. But subject to the
14 objection, so that we can have a clear record,
15 if you could go ahead and put the question back
16 to him. Thank you.
17 (The reporter read back the following:
18 And Mr. Swales, you nor any other manufacturer
19 can possibly police as best you can the use to
20 which people may improperly make of your product,
21 can you, sir?)
22 A. We cannot police the use people make of our
23 product, no, sir.
24 Q. (By Mr. Robb) In your catalog you indicate that
25 the product is to be used for marine

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1 application?
2 A. That is correct.
3 Q. When you found out that it wasn't in a
4 particular instance, you told people?
5 A. We took action to stop those people using our
6 products and to stop our agents from supplying
7 them.
8 Q. Nothing else you can do, is there, Mr. Swales?
9 A. Not at all.
10 MR. SULLIVAN: I object.
11 MR. THOMPSON: I object to the form
12 of the question.
13 MR. WALDECK: Objection.
14 MR. ROBB: Subject to the objection,
15 I think they may have run over. Subject to
16 those objections, let me put that question to
17 you again. And wait till she finishes, pause,
18 and then if you would, give your answer.
19 (The reporter read back the following:
20 Nothing else you can do, is there, Mr. Swales?)
21 A. No, there is not, sir.
22 Q. (By Mr. Robb) Let me show you what's been
23 marked as Exhibit 125, and let me ask you, sir,
24 if you could identify that.
25 MR. WALDECK: Mr. Robb, could we have

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1 the Bates number on that document if you have it
2 just for reference?
3 MR. ROBB: Certainly.
4 MR. HARRIS: The Bates number is LL
5 0144.
6 MR. WALDECK: I'm sorry to interrupt.
7 Thank you.
8 Q. (By Mr. Robb) Have you had a chance to look at
9 it?
10 A. Yes, I have.
11 Q. What is the subject matter of that document,
12 sir?
13 A. This is a document giving notice regarding
14 non-marine applications for our products.
15 Q. And what was the notice given in that document,
16 sir?
17 A. Do you want me to read it out?
18 Q. The portion that you believe is relevant, yes,
19 please, sir.
20 A. Probably it is asking that any non-marine
21 application for our products the user obtains
22 authority from ourselves before using it for
23 whatever application they are to use it for.
24 Q. Now, with respect to that, requesting
25 permission, has anyone at Lewmar ever granted

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1 permission for the use of a trigger latch
2 shackle to lift, suspend or lower a human being
3 from any height?
4 A. They have not, sir.
5 Q. Would such permission be granted by the Lewmar
6 Limited Company, Mr. Swales?
7 A. It would not, sir.
8 MR. THOMPSON: I object to the form
9 of the question. Calls for speculation.
10 Q. (By Mr. Robb) I'm sorry. Let me just put it to
11 you again, subject to the objection. Would such
12 permission or authority be granted by the Lewmar
13 company, Mr. Swales?
14 A. It would not be, sir.
15 Q. Why not?
16 A. Because the product is not designed for that
17 use. It is designed as a marine shackle for use
18 with a spinnaker.
19 Q. Let me show you what has been marked as Exhibit
20 126. And as we have before, would you just take
21 a moment as review it and see if you are
22 familiar with it.
23 A. (Witness complies). Okay.
24 Q. What is the subject matter of that memorandum,
25 sir?

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1 A. This is a memorandum issued by our Dutch
2 subsidiary following the accident and again it
3 is reiterating that we should not be using in
4 this particular case trigger latch shackles for
5 non-marine use.
6 Q. Now, just so I'm clear, when you say our
7 accident, does that memorandum make specific
8 reference to and is it intended to make specific
9 reference to the May 23, 1999, incident at the
10 Kemper Arena in Kansas City, Missouri, relating
11 to the death of Owen Hart?
12 A. Yes.
13 MR. THOMPSON: I object to the form
14 of the question.
15 A. Yes, it does, sir.
16 Q. (By Mr. Robb) And what specific response did
17 the Lewmar Limited Company make with reference
18 to that incident, sir?
19 A. This memorandum was following one issued by
20 Lewmar Limited to all our subsidiaries informing
21 them that there had been a serious accident and
22 that permission for any non-marine use of any of
23 our products had to be obtained from Havant,
24 from head office, before they could be sold.
25 Q. Now, have any Lewmar personnel at any level

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1 within your company, Mr. Swales, ever received a
2 request from anyone, from the WWF or stunt
3 persons employed by or hired by the WWF to use
4 any of your products at any time for any reason?
5 A. None that I'm aware of, sir, no.
6 Q. And you would be in a position, given your
7 position in the company --
8 A. Yes.
9 Q. -- to know about that, would you not, sir?
10 A. Yes, I would, sir.
11 MR. THOMPSON: I object to the form
12 of the question.
13 Q. (By Mr. Robb) I'm sorry. You have to go ahead.
14 A. Yes, I would say.
15 Q. Mr. Swales, if such a request had been
16 forthcoming in whatever form, in writing, via
17 facsimile, telegram, telephone, whatever,
18 whatever the form of communication, would you
19 tell us what the response of Lewmar Limited
20 would be.
21 MR. THOMPSON: I object to the form
22 of the question. Calls for speculation.
23 Q. (By Mr. Robb) Well, does this require you to
24 speculate or guess as to the answer in any
25 respect, sir?

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1 A. No, it does not, sir.
2 Q. Are you absolutely certain what the response
3 would have been?
4 A. I am absolutely certain.
5 Q. And would you tell the jury what the response
6 would have been?
7 MR. THOMPSON: Same objection.
8 A. We would not give permission to use a trigger
9 latch shackle to lift or suspend any person.
10 Q. (By Mr. Robb) Why not?
11 A. Because it is not designed for that purpose.
12 Q. Let me show you what has been marked as Exhibit
13 246, and as we have before take a moment and
14 familiarize yourself with that document, sir.
15 MR. THOMPSON: What is the Bates
16 number on this?
17 MR. ROBB: I'm sorry?
18 THE WITNESS: LL 0218.
19 Q. (By Mr. Robb) Have you had a chance to look at
20 it?
21 A. Yes, I have.
22 Q. What is the subject matter of that document,
23 sir?
24 A. This is a memorandum following the accident in
25 which Mr. Hart died. It preceded the previous

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1 memorandum and it is basically telling, all of
2 us, all of our distributors, to obtain
3 permission for non-marine use of any of our
4 products.
5 Q. Similar message as was in the other document?
6 A. Yes.
7 Q. Fair to say?
8 A. Yes.
9 Q. Have each of the documents which I have shown
10 you, Exhibits 29, 31, 30, 126, 125 and 124 been
11 prepared in the ordinary course of business of
12 the Lewmar Limited Company, sir?
13 A. Yes, they have, sir.
14 Q. And are these to the best of your knowledge
15 accurate copies of the original documents
16 prepared by Lewmar?
17 A. They are, sir.
18 Q. Issued by the company?
19 A. Yes, sir.
20 Q. Now, as the finance director we have -- it's
21 been indicated to us that one of the areas for
22 which you are going to be speaking on behalf of
23 Lewmar is the, and I quote, intended actual
24 market for the company's products. Is that --
25 MR. HARRIS: Mr. Robb, in regard to

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1 Category No. 1, about halfway through Category
2 No. 1, where it starts intended actual market, I
3 believe the best person for that would be
4 Mr. Townsend, Mr. Matthew Townsend.
5 MR. ROBB: Fine. Well, then if it's
6 all right with you, Mr. Swales, we will not go
7 into that. We are going to save that for
8 Mr. Townsend.
9 A. Okay.
10 Q. (By Mr. Robb) Is that agreeable?
11 A. Yes, it is, sir.
12 Q. Now, with respect to information relating to the
13 custodian or location of particular documents,
14 let me put this question to you. Are there any
15 documents at all within the Lewmar Limited
16 Company which could even be interpreted as
17 granting permission for use of a trigger latch
18 shackle to suspend a human being at any height?
19 MR. THOMPSON: I object to the form
20 of the question.
21 A. There are not, sir.
22 Q. (By Mr. Robb) Would you be in a position to
23 know that, sir?
24 A. I would, sir.
25 Q. And I understand that you are the official

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1 designee on behalf of Lewmar to speak to the
2 location of all such documents within the
3 company. Would that be correct?
4 A. Yes. That is correct, sir.
5 Q. And to the best of your knowledge there is not a
6 single document that has ever been issued by
7 Lewmar by which one could say that this device
8 could be used to suspend a person?
9 MR. THOMPSON: I object to the form
10 of the question.
11 A. There is not, sir.
12 Q. (By Mr. Robb) You say there is not?
13 A. I do, sir.
14 Q. Was there any indication to your knowledge,
15 Mr. Swales, that the trigger latch shackle that
16 was used in Kansas City for the Owen Hart stunt
17 broke?
18 A. No, sir.
19 Q. Malfunctioned?
20 A. No, sir.
21 MR. THOMPSON: I object to the form
22 of the question.
23 Q. (By Mr. Robb) Operated in any way other than it
24 was intended to be used for?
25 A. Absolutely not, sir.

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1 Q. In fact, isn't it true that the very design of
2 this product is to allow for a quick and easy
3 release under load?
4 A. That is correct, sir.
5 Q. That's the design of the product, is it not?
6 A. That is correct.
7 Q. And it indicates in fact you can't put it on any
8 clearer. That is actually -- what do you call
9 that in there, inscribed in the metal? What
10 would you call that?
11 A. It's inscribed or stamped into the metal.
12 Q. Stamped into the metal, what does it say there?
13 A. Lift spike to open -- sorry, use spike to open.
14 Q. You say use spike to open. Now, just so I'm
15 clear, is that on both sides, sir?
16 A. Yes, it is.
17 Q. The language where it says use spike to open is
18 on both sides?
19 A. Yes, it is, sir.
20 Q. And by spike, we are referring to this device?
21 A. That device or something similar, yes.
22 Q. So in other words when it's under load -- and I
23 guess, under load, that would mean when there is
24 some kind of tension or pressure on it.
25 A. Yes, sir.

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1 Q. It says use spike to open, but it doesn't say
2 that you can use anything else, does it, sir?
3 A. It does not, sir.
4 Q. Why?
5 A. Because we would not recommend to use it any
6 other way. It would be dangerous to do so.
7 Q. It would be dangerous to do so?
8 A. In normal -- in the marine purpose you would
9 certainly risk giving yourself a nasty,
10 cracked-around hand.
11 Q. Has the Lewmar company ever promoted or
12 recommended any of its products for use in the
13 stunt industry?
14 A. It has not.
15 Q. Has the Lewmar Company ever promoted or
16 recommended any of its products to suspend human
17 beings at any height?
18 A. It has not, sir.
19 Q. Given your experience and your position with the
20 company, sir, do you have an opinion to a
21 reasonable degree of certainty whether the
22 Lewmar trigger latch shackle was proper for use
23 in lowering Owen Hart from a height of 78 feet
24 at a wrestling show in Kansas City, Missouri, on
25 May the 23rd, 1999?

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1 MR. THOMPSON: I object to the form
2 of the question. It is an improper question to
3 ask a man that has not been certified as an
4 expert in this area.
5 Q. (By Mr. Robb) You may answer, sir.
6 A. The trigger latch shackle is not designed to
7 lower people from 78 feet or 50 feet or 20 feet.
8 Q. Was it a proper use of that device on May 23,
9 1999?
10 A. Totally improper.
11 MR. THOMPSON: Same objection.
12 A. It was a totally improper use of that product.
13 MR. ROBB: Mr. Swales, on behalf of
14 my clients I thank you for your time here in
15 responding to our questions this morning, and I
16 have no further questions for you. Thank you,
17 sir.
18 THE WITNESS: Okay.
19 MR. THOMPSON: As a procedural
20 manner, do you want to continue with this
21 witness and use it as our cross in response to
22 our cross-notice and finish with this witness?
23 MR. ROBB: Yes.
24 MR. HARRIS: Let's finish this
25 witness.

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1 (Recess).
2 EXAMINATION
3 By MR. THOMPSON:
4 Q. Sir, my name is Bob Thompson, and with me is
5 Julie Cox, and we represent the WWF defendants
6 in this case. What is your education?
7 A. Sorry?
8 Q. Your education.
9 A. I took a degree in business in studies, and I'm
10 a Qualified Certified Accountant.
11 Q. So you are an accountant?
12 A. Yes.
13 Q. And your role in the company?
14 A. I am finance director.
15 Q. Do you have any engineering or mechanical
16 training?
17 A. None whatsoever.
18 Q. So when you were rendering opinions about the
19 appropriateness of the use of the trigger latch
20 shackle, Exhibit 10, for various -- for stunts,
21 do you have any training that you believe makes
22 you qualified to give that type of opinion?
23 MR. ROBB: Let me just object to the
24 form of the question to the extent that I think
25 that misstates what we identified him as and

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1 that is as an expert in the use, design,
2 manufacture, promoted and recommended use of
3 Lewmar products, which I think he would be
4 qualified as an expert in, including but not
5 limited to proper and designed intended use and
6 operation, improper and non-recommended uses
7 which would not require any engineering or
8 technical, to me. That is for the record.
9 Please go ahead and answer.
10 Q. (By Mr. Thompson) Do you have any education in
11 the design of products like the trigger latch
12 shackle?
13 A. I do not, sir.
14 Q. Any mechanical engineering that would help you
15 analyze whether or not a given use is improper
16 or proper?
17 MR. ROBB: Let me just object again
18 to the extent that he is an expert as to the use
19 and appropriate use of his own products by
20 definition, since it's his product. You may
21 answer.
22 A. I do not, sir.
23 Q. (By Mr. Thompson) Have you undertaken any
24 studies that you believe qualify you to render
25 an opinion as to whether or not a certain use of

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1 the shackle is proper?
2 A. Through my experience it's not purely financial,
3 because I used to run a company called Nordsman
4 Gibb which also manufactured snap shackles.
5 Q. Were you an engineer in connection with that
6 company?
7 A. No, sir.
8 Q. What did you do for that company?
9 A. I was commercial director.
10 Q. What does commercial director do?
11 A. In this particular case I effectively ran the
12 business for three years.
13 Q. Let's, just so we've got a clear chronology,
14 let's start back. When did you graduate with
15 your degree in accounting?
16 A. Around 1985.
17 Q. And what was your first job after college?
18 A. My first job after college I was a company
19 accountant.
20 Q. For what company?
21 A. It was a small removals company.
22 Q. What is a removals company?
23 A. They remove furniture.
24 Q. A moving company in the -- would it be a moving
25 company?

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1 A. I wouldn't know what you would call it in the
2 United States.
3 Q. But when you say removal --
4 A. Remove furniture from one house to another house
5 or whatever, yes.
6 Q. How long were you with the removal company?
7 A. About six months.
8 Q. Did you graduate with a degree? Did you finish
9 college?
10 A. Yes, sir.
11 Q. After the six months as an accountant with the
12 removal company, what was your next job?
13 A. I joined a transport company.
14 Q. And what did you do for the transport company?
15 A. I was initially assistant to the finance
16 director, and later became finance director.
17 Q. What does a transport company do?
18 A. Haulage, trucking.
19 Q. Trucks. How long were you with the transport
20 company?
21 A. Eight, nine years.
22 Q. So 1994 or '95?
23 A. No, no, no. This was when I graduated with my
24 degree, not when I finally passed my accountancy
25 exams.

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1 Q. When did you pass your accountancy exam?
2 A. In '85. I passed my degree in '78, '79.
3 Q. Okay. I understand. So you are nine years with
4 the transport company?
5 A. Yes.
6 Q. All in the finance and accounting?
7 A. Yes.
8 Q. And then after the transport company what did
9 you do?
10 A. I joined a company that manufactured ladies'
11 hosiery.
12 Q. How long were you with the ladies' hosiery
13 company?
14 A. Four years.
15 Q. What did you do for them?
16 A. I was finance director.
17 Q. Where were you based?
18 A. That was in Nottinghamship.
19 Q. Now, you graduated with your college degree in
20 '78, but you didn't pass your accountancy board
21 until '85. Is that right?
22 A. That is right.
23 Q. Did you take the test between '78 and '85?
24 A. There are a number of stages you have to go
25 through.

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1 Q. Okay. How long does that normally take?

2 A. I don't know what you would class as normal,

3 sir.

4 Q. Well, did you ever take -- attempt any of the

5 various stages that are necessary to receive

6 your accountancy certification and fail any of

7 those?

8 A. Yes, sir, I did.

9 Q. How many times?

10 A. I think I had to retake one paper twice.

11 Q. Did you have to retake any others?

12 A. Because of the way the exams are structured, I

13 had to retake papers that I had passed.

14 Q. Okay. So you did have to retake papers in

15 addition to the one that you had to take twice?

16 A. Yes. You have to pass the whole section at one

17 time.

18 Q. And were there any other sections that you had

19 to take? How many sections did you have to take

20 more than once?

21 A. There was one paper that I failed twice.

22 Q. After the ladies' hosiery company, what did

23 you -- where did you go to work?

24 A. I worked in civil engineering for three, four

25 years.

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1 Q. With what? Is that a government --

2 A. No. Now, they build roads basically.

3 Q. Was this a private company that built roads?

4 A. Yes, sir.

5 Q. And what did you do for the road building

6 company?

7 A. I was finance manager.

8 Q. And how long were you with the road building

9 company?

10 A. About four years.

11 Q. This would take us up to when, approximately?

12 A. 1994.

13 Q. What was your next job?

14 A. I joined Nordsman Gibb Limited.

15 Q. What did you do -- is it Nordstrom?

16 A. Nordsman, N-O-R-S-D-M-A-N.

17 Q. Nordsman. Sorry. Nordsman Gibb Limited, what

18 was your job with --

19 A. Initially, commercial manager and then

20 commercial director.

21 Q. What is the difference between the two jobs?

22 A. Only inasmuch as you have additional duties as a

23 director. You have statutory responsibilities.

24 Q. How long were you with Nordsman Gibb Limited?

25 A. I, in a sense, still am. I am still a director

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1 of Nordsman Gibb Limited. It is part of the

2 same group as Lewmar.

3 Q. When did Nordsman Gibb and Lewmar become part of

4 the same group?

5 A. I believe 1995.

6 Q. Were you part of the group that made the

7 decision to -- well, tell us how that came

8 about. How did the two come together?

9 A. Right. Nordsman Gibb had been part of a group

10 of companies that was purchased by some bench

11 capitalists in 1994. In 1995 they purchased the

12 group of companies that owned Lewmar.

13 Q. And did you assume any new job responsibilities

14 in connection with Lewmar?

15 A. Not immediately. I didn't take on

16 responsibilities at Lewmar until August of last

17 year.

18 Q. Okay. So when was that exactly? That would be

19 August of 1999?

20 A. Yes, sir.

21 Q. So you had -- did you have any involvement at

22 all with Lewmar before August of 1999?

23 A. We had limited involvement with it.

24 Q. All right. Describe for us the limited

25 involvement that you had with Lewmar prior to

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1 August of 1999?

2 A. In the sense that we were associated companies

3 and some of the Lewmar subsidiaries were our

4 agents, I was involved with the marine products

5 division, which included Lewmar and Nordsman

6 Gibb. I attended various joint meetings, joint

7 conferences, and I reported into the managing

8 director of Lewmar.

9 Q. What exactly between the time that the two

10 companies became affiliated sometime in 1995 and

11 your more formal, I guess, involvement in August

12 of 1999, what exactly did you do for Lewmar, for

13 the Lewmar-related companies?

14 A. We were supplied to them. We took over the

15 manufacture of the Lewmar snap shackle range.

16 Q. When did the Nordsman Gibb division or section

17 of the company take over the manufacture of the

18 Lewmar snap shackle rings?

19 A. 1999.

20 Q. And the manufacture, would that include Exhibit

21 10?

22 A. No. Nordsman Gibb already had its own range of

23 snap shackles, and Lewmar started to -- well,

24 they put the Gibb shackles into the Lewmar

25 catalog in 1999. In the year 2000 there were no

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1 shackles in the catalog because the customer
2 base had been transferred to Nordsman.
3 Q. So I want to make sure that we're clear. Before
4 August of 1999, you had no involvement with the
5 manufacture of Exhibit 10. Is that correct?
6 A. That is correct.
7 Q. And after August of 1999 it is no longer
8 manufactured. Is that correct?
9 A. That is correct, sir.
10 Q. So in your professional experience you have
11 never had anything to do with the manufacture of
12 Exhibit 10. Is that correct?
13 A. That is correct.
14 Q. Do you have any idea or personal knowledge -- do
15 you have any personal knowledge as to the design
16 of Exhibit 10?
17 A. No, sir.
18 Q. Do you have any knowledge as to what efforts
19 Lewmar undertook or what analysis was performed
20 in connection with the design by Lewmar of
21 Exhibit 10?
22 A. I am aware as to the style and detail to the
23 testing that they do on the products.
24 Q. How are you aware of the testing that Lewmar
25 does on the products?

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1 A. From discussions and from testing of Nordsman
2 Gibb products that they did.
3 Q. But have you ever witnessed any testing on a
4 snap trigger latch shackle in the form of
5 Exhibit 10?
6 A. I cannot remember. I have seen shackles tested.
7 I am not sure if I have seen that particular
8 shackle tested.
9 Q. So you are not sure if you have seen this
10 particular style of shackle tested. Is that
11 correct?
12 A. That is correct, sir.
13 Q. Has anyone ever reported to you on the testing
14 of trigger latch shackles like Exhibit 10?
15 A. Sorry. How do you mean reported?
16 Q. Well, I just want -- you are the finance
17 director. Correct?
18 A. Yes.
19 Q. So would it be in the normal course of your
20 business -- the engineers would or would not
21 report to you about the testing of trigger latch
22 shackles?
23 A. I would have become aware if there had been a
24 problem with the testing of any of the Lewmar
25 products, but it would come up in production

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1 meetings which I attend.
2 Q. Is that part of your job responsibility, to
3 review testing of Lewmar products?
4 A. I don't personally review it, but as I said in
5 the production meetings. Any problems are
6 related at that stage.
7 Q. So you might have heard about it, but you're not
8 responsible for it. Is that a fair statement?
9 A. That is, sir.
10 Q. And you don't remember hearing about any
11 problems with the shackle?
12 A. No.
13 Q. Is that correct?
14 A. That is correct, sir.
15 Q. But the fact is the company that -- you didn't
16 have any responsibility with this shackle until
17 August of 1999 at all. Is that right?
18 A. No direct responsibility, no, sir.
19 Q. And at that point in time Exhibit 10, the
20 manufacture of it, was being phased out anyway.
21 Is that right?
22 A. At that point in time it had been -- it had
23 stopped to be manufactured.
24 Q. Do you know why?
25 A. Yes, sir. The group had two snap shackles

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1 manufacturers, Nordsman Gibb and Lewmar. Lewmar
2 consumed a lot of shackles. By that I mean that
3 they didn't sell many in this form. They
4 attached them to their pulley blocks. So they
5 were sold to -- do you understand the pulley
6 block?
7 Q. Somewhat, but please explain.
8 A. It's the block you would use to put a rope
9 through or sheet for tension, so using the
10 shackle to attach it to the deck, and then you
11 have got to move it around. It wouldn't be a
12 trigger latch shackle. Whereas Nordsman Gibb,
13 their range of shackles had a much higher
14 profile in the market. So they sold more
15 complete shackles. So it was a marketing
16 decision that it made more sense to use the Gibb
17 shackle because it had a better name.
18 Q. Was the decision made in -- to your knowledge,
19 do you know if anything about that decision was
20 related to the -- a determination that the
21 Gibson -- Gibb shackle, I'm sorry, was better in
22 any way, or was it simply a market decision
23 based on the name?
24 A. It was purely a marketing decision.
25 Q. What do you know -- have you done any -- excuse

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1 me. Let me restart. In preparation for this
2 deposition have you done anything to determine
3 what marketing channels were utilized by Lewmar
4 in the sale of -- sale of trigger latch shackles
5 like Exhibit 10?
6 A. I have, but I would think that you are better
7 putting that question to Matthew Townsend.
8 Q. So what have you done then?
9 A. We would in term of the shackle that was used,
10 the only thing we can say with certainty is that
11 we manufactured it, and it was supplied into our
12 warehouse in Havant for shipping. We cannot
13 trace precisely how it arrived in America. Most
14 likely it was shipped out to Lewmar, Inc., and
15 they sold it onwards.
16 Q. And Lewmar, Inc., is who?
17 A. Lewmar, Inc., is an associated company of Lewmar
18 Limited. We're both owned by the same group.
19 Q. And where is Lewmar, Inc., based?
20 A. Gilford, Connecticut.
21 Q. Have you talked to anyone at Lewmar, Inc., in
22 preparation for your deposition here today?
23 A. Yes, I have, sir.
24 Q. Who have you talked to?
25 A. Randy Blanton.

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1 Q. I'm sorry. You have to help me, Randy --
2 A. Blanton, B-L-A-N-T-O-N.
3 Q. What is Mr. Blanton's job?
4 A. Mr. Blanton runs the operation in Gilford.
5 Q. Have you talked to anyone else in the states
6 about the sale of trigger latch shackles like
7 Exhibit 10?
8 A. No, sir.
9 Q. So whatever information you have came from
10 Mr. Blanton; is that correct?
11 A. Yes, sir.
12 Q. I have a couple more questions about your
13 qualifications before we move on. Was I correct
14 in understanding that you have never seen this
15 trigger latch shackle in use on a boat?
16 A. Yes, sir. That was correct.
17 Q. So we don't have a double negative, you have
18 never seen it in use on a boat?
19 A. No, sir.
20 Q. So have you ever personally analyzed or observed
21 the operation of a trigger latch shackle like
22 Exhibit 10 in operation?
23 A. No, sir.
24 Q. What did you ask Mr. Blanton about the
25 distribution of trigger latch shackles?

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1 MR. HARRIS: I'm going to object on
2 attorney/client privilege. The question is
3 overly broad, may encompass discussions that
4 were had between counsel.
5 Q. (By Mr. Thompson) In response to Mr. Harris'
6 objection, to the extent that any of your
7 conversations with Mr. Blanton occurred in the
8 presence of counsel, I don't want to inquire
9 about that, about those conversations. But I do
10 want to know -- let me ask you this. What did
11 Mr. Blanton tell you about the distribution of
12 the trigger latch shackle?
13 A. My discussions with Mr. Blanton have been more
14 along the lines of the contractual arrangements
15 we have with our agents in America. Discussions
16 on the distribution channels, again, you should
17 refer to Mr. Townsend.
18 Q. What contractual relations do you have with your
19 agents for distribution in America?
20 A. It varies from agent to agent. I should say I
21 use agent and distributor not particularly in a
22 legal term in that we use both meaning the same
23 thing. With our bigger distributors we will
24 have formal contracts. With our smaller ones
25 it's almost an exchange of letters. They are

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1 informal.
2 Q. Do you know if any of these formal contracts
3 contain any instructions or provisions that
4 would tell those distributors to only distribute
5 your products in connection with marine
6 application?
7 A. We only have marine industry distributors. We
8 only deal with people in the marine industry.
9 Q. My question was, do you know if the contracts
10 have any provisions that tell those distributors
11 to only sell a Lewmar products for use in the
12 marine industry?
13 MR. ROBB: Let me just pose an
14 objection to the extent that it has been asked
15 and answered. The witness stated his answer was
16 he only sells to marine distributors. You may
17 answer again, sir.
18 A. Sorry. Could you repeat the question?
19 Q. (By Mr. Thompson) Subject to the objection, do
20 you know if there are any provisions in those
21 contracts that tell those distributors to only
22 sell Lewmar products for use in the marine
23 industry?
24 A. I do not know.
25 Q. Have you looked?

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1 A. No, sir.
2 Q. Have you looked at the contracts at all?
3 A. I have not seen a copy of the contract.
4 Q. So you don't know whether the contracts have
5 such provision or not?
6 A. No, sir.
7 Q. Are you aware of any letter, memo or writing of
8 any kind that has been distributed to -- that
9 has been sent to distributors in the United
10 States that would tell them not to use Lewmar
11 products in non-marine applications?
12 A. Lewmar Limited had sent correspondence to our
13 agents in America.
14 Q. Okay. Do you have copies of those documents?
15 A. Here, sir.
16 Q. And we will talk about -- is this your
17 understanding, that those have been --
18 A. Lewmar, Inc., is our distributor in America,
19 sir.
20 Q. Is it your understanding that any of these
21 letters -- and you are referring to the
22 exhibits. Let's refer to these specifically.
23 Which ones are you referring to, sir?
24 A. I am referring to Exhibit 125 --
25 MR. ROBB: 124, 126?

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1 THE WITNESS: No. They were purely
2 the Dutch ones. There is another one somewhere,
3 the one that came out late.
4 Q. (By Mr. Thompson) Is this the supplemental, the
5 one that was supplementally produced today?
6 A. Yes.
7 MR. ROBB: 246?
8 THE WITNESS: Yes.
9 Q. (By Mr. Thompson) Just so we're clear, I'm
10 understanding, and correct me if I'm wrong, that
11 the only letter that was sent to Lewmar
12 distributors or agents in the states is
13 exhibit -- telling them not to sell the Lewmar
14 products for non-marine applications is Exhibit
15 246, and that occurred after the Owen Hart
16 accident. Is that correct?
17 A. That is correct, sir.
18 Q. Okay. So even though we had Exhibits 124, 125
19 and 126 telling the Dutch companies not to
20 distribute the products for non-marine
21 application, and early as when, sir?
22 A. Well, I don't -- 125 isn't dated.
23 Q. Okay.
24 A. So I don't know when that was issued. The other
25 two have both been issued by the Dutch branch.

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1 Q. So and let's look at this one. This would be
2 124. It's dated when, sir?
3 A. 11/9/96.
4 Q. And Exhibit 126 is dated --
5 A. 1/7/99.
6 Q. And so Lewmar distributors in Holland were told
7 as early as 1996 and again in 1999 not to
8 distribute Lewmar products for non-marine
9 applications. Is that correct?
10 A. That is correct, sir.
11 Q. Because you were -- your company was aware as
12 early as 1996 that, in fact, the product was
13 being used in the non-marine application. Is
14 that right?
15 A. We were aware of one incident when the
16 product -- when a snap shackle product was used
17 for non-marine application.
18 Q. You were aware of that incident in 1996, and you
19 are referencing Exhibit 124. Is that correct?
20 A. Yes, sir.
21 Q. And then in 1999 -- now I am looking at Exhibit
22 126. You received a message of another accident
23 in the U.S.A. Is that right?
24 MR. HARRIS: I object to the form of
25 the question. Ambiguous in regard to another

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1 accident in the United States. The first
2 incident was an incident in Hamburg, Germany, I
3 believe the testimony was.
4 Q. (By Mr. Thompson) That's a fair objection. Let
5 me rephrase. In Exhibit 125 you were advised of
6 an accident in the United States. Is that
7 correct, sir?
8 A. No, sir.
9 Q. Would you read the first line of Exhibit 126
10 starting with unfortunately?
11 A. Unfortunately we currently received the message
12 that in the U.S.A. a serious accident happened
13 with a harnessing -- harness rig of which a
14 Lewmar trigger shackle was part.
15 Q. What is the date of that memo?
16 A. The first of July.
17 Q. That's July 1999?
18 A. Yes.
19 Q. Was this the Owen Hart accident?
20 A. Yes.
21 Q. So in 1996 you became aware of the bungee
22 jumping accident? Lewmar became aware of the
23 bungee jumping accident?
24 A. Yes, sir.
25 Q. And you provided a notice to users in Holland

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1 that sales should not be made for non-marine
2 applications. Is that correct?
3 A. Yes, sir.
4 Q. And no such notice was provided to purchasers of
5 the products in the United States until Exhibit
6 246 was mailed out in June of 1999. Is that
7 correct?
8 A. Right.
9 MR. HARRIS: I object to the form of
10 the question. Misstates the previous testimony.
11 We are not talking about notice to his ultimate
12 users. We are talking about notices to either
13 distributors or agents.
14 Q. (By Mr. Thompson) Okay. You can answer.
15 A. Could you repeat the question?
16 Q. No notice was provided to distributors or agents
17 in the United States until 16 June 1999?
18 A. That is correct, sir.
19 Q. Now, do you know why Lewmar decided not to
20 distribute the same notice that the users or the
21 agents and distributors in Holland got in 1996
22 to other distributors and agents throughout the
23 world?
24 A. I believe it was because it was such unusual use
25 of the product. We couldn't actually imagine

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1 anybody else attempting to use it for such a
2 use.
3 Q. How do you know that? I mean, did you talk to
4 anyone that was involved with the distribution
5 of the notice in 1996?
6 A. Yes, sir.
7 Q. Who have you talked to?
8 A. I have spoken to our previous finance director.
9 Q. Okay. Who is that?
10 A. Mrs. Helen Watts.
11 Q. And who is -- is Helen Watts still with the
12 company?
13 A. No, sir.
14 Q. Where is she now?
15 A. I think she's in the British Museum, sir.
16 Q. Is she here in the city today? You say in the
17 British Museum. She works for the British
18 Museum?
19 A. I believe so.
20 Q. In what city?
21 A. London.
22 Q. When did you speak to Helen Watts?
23 A. Until December, sir, she worked at Lewmar, so we
24 have had a number of discussions on this issue.
25 Q. Okay. I want to go through those discussions.

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1 Again, outside the presence of -- any that
2 occurred outside the presence of counsel. When
3 did you first speak to Helen Watts about the
4 issue of the notice that was provided to Holland
5 agents and distributors?
6 A. I couldn't give you a date, sir.
7 Q. Approximately, sir.
8 A. Post-August.
9 Q. What was the reason or what prompted you to go
10 speak to Helen Watts about this issue? When I
11 say this issue, specifically I'm talking about
12 Exhibit 124.
13 A. Because I knew that Mrs. Watts was leaving our
14 organization in December, and I knew that this
15 would be on my desk, so it clearly made sense to
16 review the papers with her.
17 Q. Okay. How did you actually find these papers?
18 I mean, did something prompt you to go look and
19 see if notice had been provided to the agents
20 and distributors?
21 A. It was part of the documents that we have given
22 to our attorneys.
23 Q. Did you and Ms. Watts talk specifically about
24 Exhibit 124?
25 A. We reviewed the whole file, sir.

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1 Q. When you say review the whole file, what was in
2 that file?
3 A. It's the documents that we forwarded to our
4 attorneys.
5 Q. Have you produced all of those documents? Do
6 you know what's been produced to other counsel
7 in this case?
8 MR. HARRIS: I am going to object to
9 the form of the question. It is vague and
10 ambiguous. The document production speaks for
11 itself. What other documents that may exist to
12 the extent they involve attorney/client
13 privilege or work product, we have so stated in
14 our discovery responses.
15 Q. (By Mr. Thompson) How big was the file that you
16 pulled together in terms of size?
17 A. Oh, it's a couple of box files.
18 Q. And you and Mrs. Watts reviewed that file
19 together?
20 A. Yes, sir.
21 Q. And was this at Lewmar's offices?
22 A. Yes, sir.
23 Q. In Havant?
24 A. Yes, sir.
25 Q. And how much time did you spend reviewing those

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1 files with Mrs. Watts?
2 A. We discussed the case on a number of occasions.
3 Q. And what -- when you say you discussed the
4 case --
5 A. She briefed me as to what was happening. She
6 briefed me with the --
7 MR. ROBB: Excuse me. Let me just
8 interpose an objection to the extent that she
9 may have received information from counsel. I
10 am going to object to it as calling for perhaps
11 attorney/client or work product that it should
12 not be communicated at this time.
13 Q. (By Mr. Thompson) You can answer.
14 MR. HARRIS: You can answer.
15 MR. WICKENS: He means except to the
16 extent that it involves attorney/client.
17 MR. HARRIS: As we discussed, any
18 discussions he had with counsel in this case are
19 privileged. But to the extent that didn't
20 involve those discussions you may --
21 THE WITNESS: If we are talking about
22 discussions regarding discussions somebody else
23 has had with you, is that privileged?
24 MR. HARRIS: That would be
25 privileged.

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1 THE WITNESS: Then I think it's
2 privileged.
3 Q. (By Mr. Thompson) Well, are you suggesting,
4 sir, that the only thing you spoke about with
5 Mrs. Watts -- were any attorneys present during
6 these conversations?
7 A. No, sir.
8 Q. And did Ms. Watts, to your knowledge, did she
9 participate in pulling together the file?
10 A. She assisted pulling together the file.
11 Q. Okay. Who all assisted?
12 (Off the record).
13 Q. (By Mr. Thompson) Who were the people that
14 assisted?
15 A. It was Mrs. Watts, Mr. Mark Gibson and
16 Mr. Matthew Townsend.
17 Q. Anyone else?
18 A. I am not aware.
19 Q. Did you ask Ms. Watts about if she was involved
20 in providing the notice that we have talked
21 about in Exhibit 124?
22 A. No. 124 is from our Dutch distributor.
23 Q. Okay.
24 A. I believe this notice is from Mrs. Watts, which
25 was certainty to him.

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1 Q. And when you say this notice, you are talking
2 about Exhibit 125?
3 A. Yes, sir.
4 Q. And did Ms. Watts tell you who wrote Exhibit
5 125?
6 A. I believe that she wrote it, sir.
7 Q. Did she tell you who told her to write that?
8 A. No, sir.
9 Q. Did she tell you to whom she distributed Exhibit
10 125?
11 A. I believe it was only sent to our Dutch
12 subsidiary.
13 Q. Did she tell you who made the decision to only
14 send it to the Dutch subsidiary?
15 A. No, sir.
16 Q. To your knowledge was that her decision?
17 A. I do not know, sir.
18 Q. Have you asked her?
19 A. No, sir.
20 Q. Have you asked her why it wasn't sent to other
21 users or seller of the product?
22 A. As I said earlier, I believe the reason was that
23 it's such an unusual use of a product.
24 Q. But she didn't tell you that; that's just your
25 speculation as you sit here today?

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1 A. That is my understanding as to the reason, sir.
2 Q. Okay. And I want to understand what the basis
3 of your understanding is, that that's the
4 reason. Has anyone told you that?
5 A. Not -- we have had discussions with Mr. Townsend
6 and Mr. Gibson. They were with the company at
7 the time. It may be better to ask them further
8 details.
9 Q. Okay. Exclusive or in addition to Ms. Watts,
10 has anyone at Lewmar told you why the decision
11 was made to only send Exhibit 125 to Holland?
12 A. No, sir.
13 Q. So nobody has told you how that decision was
14 made?
15 A. No, sir.
16 Q. So your opinion that it was because this was an
17 isolated incident is just your thoughts as you
18 sit here today?
19 A. As I just said, we have had discussions with
20 Mr. Gibson and Mr. Townsend as well. They were
21 with the company at the time the notice was sent
22 out.
23 Q. But Mr. Gibson and Mr. Townsend have not told
24 you why that decision was made?
25 A. Again, the comment is that my understanding from

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1 discussions with them and Ms. Watts is that that
2 is the case.
3 Q. And my question then is, if your understanding
4 is based on conversations with them, I want to
5 know what they told you.
6 A. They have stated that the basis for their
7 statement -- I'm suggesting you should ask them.
8 Q. Sorry to belabor this, but we must not be
9 communicating on this point. Has Mr. Gibson,
10 Mr. Townsend or Ms. Watts told you why the
11 notice, Exhibit 125, was only distributed to
12 Holland?
13 MR. HARRIS: At this point I am going
14 to object and asked and answered. Go ahead and
15 answer.
16 A. I think this calls for me to give --
17 MR. HARRIS: Any discussions you have
18 had with counsel you are not to talk about.
19 Just if you have your recollection of any
20 discussions with Ms. Watts, Mr. Gibson or
21 Mr. Townsend outside of any conversations that
22 involved counsel, then you can disclose that.
23 Otherwise, it's not.
24 A. The conversations we had was in the presence of
25 counsel.

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1 MR. THOMPSON: Well, even if the
2 conversation was in the presence of counsel it
3 does not make the fact as to why the decision
4 was made in 1996 privileged. And if he knows or
5 if he has been told by other company
6 representatives why the decision was made only
7 to provide notice to users in Holland, then I am
8 entitled to know that.
9 MR. HARRIS: Well, just so the record
10 is clear, he's just told you that he wasn't
11 involved originally in the decision in regard to
12 Exhibit 125; that the only way he would have
13 information, and it's clear now, is through
14 discussions that involve counsel from others.
15 So I think that tells you your answer right
16 there. Any knowledge he has on this topic would
17 come from discussions involving counsel.
18 Therefore it would be privileged. He has
19 already told you who you can ask to get the
20 information you desire.
21 MR. THOMPSON: The problem is though
22 he has been designated as the person that would
23 know about the distribution, sale of this
24 product, and so if he knows, I am entitled to
25 know.

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1 MR. HARRIS: And I think you also
2 have a very specific request in regard to any
3 memoranda, bulletins, communications to
4 distributors in which we have designated, I
5 believe, Mr. Townsend to respond to that.
6 MR. THOMPSON: All right. That's
7 fine.
8 MR. HARRIS: Thank you.
9 Q. (By Mr. Thompson) Have you made a search to see
10 if any notice other than the one referenced
11 in -- exhibited by Exhibit 125 and Exhibit 246
12 has been provided to distributors or agents of
13 Lewmar advising them not to sell Lewmar products
14 for non-marine use?
15 A. I am not aware that any other formal notice has
16 been given.
17 Q. Are you aware of any informal notice?
18 A. I have been in meetings, in conferences, when
19 the statement has been made that we should not
20 be supplying to non-marine industry without
21 prior authorization.
22 Q. When were those discussions or comments made?
23 A. I believe it was in 1998.
24 Q. Do you recall who made that comment?
25 A. We had a discussion at the sales meeting

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1 regarding non-marine uses of our products.
2 Q. Who was present at that meeting?
3 A. I have got to state first that I was present at
4 that meeting as a director of Nordsman Gibb
5 Limited, not Lewmar. Our managing director was
6 present. Helen Watts was present. Our
7 subsidiary managers were present. There may
8 have been some of our product managers.
9 Q. Who was the managing director?
10 A. Simon Hartley.
11 Q. Is it sir, a Mr.?
12 A. Mr.
13 Q. Mr. Hartley, is Mr. Hartley still with the
14 company?
15 A. Yes, he is, sir.
16 Q. And what is his position?
17 A. He is still managing director.
18 Q. Is that like -- does that mean he is the --
19 A. He is the boss.
20 Q. He is the boss?
21 A. Yeah.
22 Q. CEO?
23 A. Yes.
24 Q. And subsidiary managers, how many of those were
25 present?

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1 A. We have four subsidiaries, five subsidiaries,
2 sir.
3 Q. So is it fair to say that the bosses of all the
4 subsidiaries are present?
5 A. Yes, sir.
6 Q. Who were they?
7 A. Ova Necander.
8 Q. And what subsidiary is he --
9 A. Sweden. Subsidiary manager in Holland in the
10 UK, France and America.
11 Q. I need names.
12 A. You want names. All right. Hendrik van der
13 Linde is the Dutch manager, Michelle Villeneau
14 is the French manager, Martin Cowell is the UK
15 manager, and Randy Blanton is the U.S.A.
16 manager.
17 Q. So we have got Sweden, Holland, UK, France and
18 the U.S.
19 A. Yes, sir.
20 Q. So there were five subsidiary managers?
21 A. Yes, sir. Which ones have we got?
22 Q. Sweden. We don't have Holland?
23 A. Hendrik van der Linde.
24 Q. And that is Mr. van der Linde that is the author
25 of Exhibit 124. Is that correct?

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1 A. Yes, sir.
2 Q. Now, product managers, you mentioned product
3 managers. Were they also present?
4 A. I cannot say with certainty if they were present
5 at that stage or not.
6 Q. Was there a stage at which they were present
7 during the discussion of non-marine use of the
8 product?
9 A. The conference normally lasted a couple of days,
10 and they are present at part of those
11 discussions.
12 Q. Where did the conference occur?
13 A. In our offices in Havant.
14 Q. Do you know what month of 1998 this occurred?
15 A. I believe it was May or June.
16 Q. Are the proceedings in this meeting recorded in
17 any way?
18 A. Not really, no.
19 Q. Well, is there anyone that's the secretary of
20 this meeting?
21 A. I don't believe there were minutes taken.
22 Q. Have you made a search to see if there were any
23 minutes taken during this meeting?
24 A. I have not received this. We have the pack of
25 people's presentations given out.

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1 Q. Have you looked to see if there are any minutes
2 from this meeting that would relate in any way
3 to the non-marine sale or use of Lewmar
4 products?
5 A. No, sir, but I am very certain that minutes were
6 not done at that stage.
7 Q. How about have you made any inquiry of
8 participants or attendees at the meeting to
9 determine whether or not they kept any notes of
10 their own that would reflect a discussion of
11 non-marine use of Lewmar products?
12 A. No, sir, I have not.
13 Q. All right. So now if I understand the CEO,
14 Mr. Hartley, was present?
15 A. Yes, sir.
16 Q. As were the CEO's or the heads of all the
17 subsidiaries?
18 A. Yes, sir.
19 Q. And you recall that there was a discussion about
20 the non-marine use of Lewmar products. Is that
21 right?
22 A. Yes, sir.
23 Q. All right. Tell us everything you can recall in
24 as much detail as you can recall about that
25 discussion.

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1 A. I cannot recall how the subject came up. I
2 should say that the company I was with do supply
3 into the industry market, but it's a different
4 product than the Lewmar product. It's a rigging
5 product. And I had done a presentation on
6 industry uses of Nordsman Gibb products that
7 day. I believe that there was just a brief
8 general discussion as to whether or what actions
9 we should take regarding non-marine use of our
10 product.
11 Q. Okay. When you say the company that you were
12 with, are you talking about Nordsman Gibb?
13 A. Yes, sir.
14 Q. Nordsman Gibb is -- also made trigger latch
15 shackles. Is that right?
16 A. It is right, yes, sir.
17 Q. Did the Nordsman Gibb trigger latch shackles
18 have industrial or non-marine applications?
19 A. Nordsman Gibb produced a separate industrial
20 catalog. I don't believe any of the snap
21 shackles were included in it, and during the
22 period that I was there I am not aware of any
23 non-marine use for snap shackles. They would be
24 a very expensive option if someone was to use
25 them.

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1 Q. Was there any kind of -- we will get down to the
2 specifics, but was there any kind of snap
3 shackle that you know was put to some kind of --
4 an industrial application?
5 A. I am aware of actually one non-marine use for a
6 snap shackle.
7 Q. Okay. And what is that?
8 A. I will use this one to show you, but it was not
9 a trigger latch shackle. Okay?
10 Q. I understand.
11 A. It had -- it was significantly bigger than this,
12 had a bigger eye on it coming out. And it was
13 sold to the Ministry of Defense. It was either
14 used on tanks or on their support lorries. You
15 can imagine the tanks going along. If there is
16 a dip in the field, they can't go in and out.
17 And they had like drain pipes attached to them,
18 and they pull a lever, which would have a snap
19 shackle which would release the snap shackle.
20 The drain pipes fall into the hole and the tank
21 goes on top of it.
22 Q. So they were used to help secure drain pipes on
23 the front that would fill up the ditch, I guess,
24 so that the tank could go across?
25 A. Yes.

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1 Q. And was this a Nordsman Gibb shackle?
2 A. Nordsman Gibb plunger shackle.
3 Q. How does a plunger shackle differ from a trigger
4 latch shackle?
5 A. I just happen to have one here. You can always
6 use them as key rings. They are not designed to
7 open. The release is here which releases that
8 way. There is no area for putting your finger
9 in or a fit. They have a different use on a
10 yacht. They are a much cheaper product and
11 would be used for hoisting a sail or that kind
12 of thing, a totally different purpose to that.
13 Q. Am I correct in understanding that one of the
14 primary differences between the plunger trigger
15 and the trigger latch shackle is that the
16 trigger latch shackle can be released under
17 load?
18 A. That question should probably be targeted at
19 Mr. Gibson or Mr. Townsend.
20 Q. Okay. Now, back to this, did you make a
21 presentation about non-marine marketing or
22 markets that were available for Lewmar products?
23 A. No.
24 Q. All right. Were you the one that brought up
25 non-marine use of Lewmar products?

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1 A. No, sir.
2 Q. At this meeting?
3 A. No. Let me explain, sir. My presentation was
4 on non-marine use of Nordsman Gibb products.
5 Q. I understand.
6 A. Not Lewmar products.
7 Q. Okay. And was the purpose of your presentation
8 to -- what was the purpose of your presentation?
9 A. Because we were part of the same group, in many
10 indications the Lewmar subsidiaries, certainly
11 in Europe, were our agents, and it was an
12 understanding to make them know the availability
13 for Nordsman Gibb products in the non-marine
14 sector.
15 Q. Was there any discussion that these broader
16 markets also be available of Lewmar products?
17 A. No, sir.
18 Q. Was it discussed at all?
19 A. Not to my knowledge, sir.
20 Q. Do you recall any comments or statements by
21 anyone at that meeting about non-marine
22 application for Lewmar products?
23 A. Beyond the discussion which I have already
24 mentioned, no, sir.
25 Q. What discussion did occur about non-marine

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1 application for Lewmar products?
2 A. Only to the extent that we would not be
3 supplying it without authority.
4 Q. Was there some discussion -- was it made --
5 comment made by someone that indicated that
6 non-marine use had occurred of Lewmar products?
7 A. The people at the meeting were aware of the
8 bungee jump case. I believe that the person
9 that -- no, there was no discussion as to what
10 uses may have been made of Lewmar products on
11 monitoring purposes.
12 Q. Was the bungee jump case specifically mentioned
13 in this meeting?
14 A. I cannot recall.
15 Q. But you do recall specifically that there was
16 some mention at this meeting that the company
17 should not allow non-marine applications without
18 authorization. Is that correct?
19 A. Yes, sir.
20 Q. Did the CEO of the company or anyone else make
21 any suggestions about making that rule known to
22 the agents or distributors throughout the world?
23 A. Well, our main agents were sat around the table.
24 Q. All right. Who are your main agents?
25 A. Well, our distributors in Holland, France, are

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1 all distributors.
2 Q. Did you understand that as a result of this
3 meeting that your main agents around the world,
4 these five individuals, were to make it known in
5 their area markets that the product was not to
6 be used for non-marine application without
7 specific authorization?
8 A. I cannot recall, sir.
9 Q. Well, you do recall that it was discussed?
10 A. Yes.
11 Q. The non-marine application should not be allowed
12 without specific authorization?
13 A. Yes, sir.
14 Q. Do you know, sir, as you sit here today whether
15 any of these individuals took any steps
16 following this meeting to see that that rule
17 that non-marine application would not be allowed
18 without specific authorization, that that was
19 followed?
20 A. I do not know, sir.
21 Q. Have you even bothered to ask any of those
22 people?
23 A. No, sir.
24 Q. So if I want to know what was done in America to
25 see that these snap shackles were not used for

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1 non-marine applications, I go talk to somebody
2 else?
3 A. If you are discussing America, then Mr. Blanton
4 is the person to talk to, sir.
5 Q. Okay. And as for these other marketplaces, I
6 need to talk to the heads of those subsidiaries.
7 Is that right?
8 A. Yes, sir.
9 Q. Did you keep any written materials or did you
10 hand out any written materials advising the
11 attendees of this meeting of potential
12 non-marine markets for the Nordsman Gibb
13 products?
14 A. Yes.
15 Q. Do you have copies of those documents in your
16 files somewhere?
17 A. They are available, yes.
18 Q. Was this a formal handout that you gave to the
19 attendees at the meeting?
20 A. No. I did a presentation with slides.
21 Q. Do you still have those slides?
22 A. I certainly have copies of the photographs we
23 used, yes.
24 Q. Did you give a speech? I mean, did you keep
25 notes?

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1 A. I spoke for 15, 20 minutes.
2 Q. Where are those slides and that file kept?
3 A. It will either be in my old office in
4 Nottinghamshire or in Havant.
5 Q. Does it have a file name? Is it like a roper
6 that you have written the name of the file on?
7 A. No. I would have given the original of this
8 back to our Sales Department.
9 Q. Have you looked at this file recently?
10 A. No, sir.
11 Q. But you are certain that it still exists
12 somewhere?
13 A. I'm certain that the photographs still exist,
14 yes.
15 Q. Whether or not any notes or -- you just don't
16 know?
17 A. I put slides up to describe the kind of use that
18 you could have made with Nordsman Gibb products.
19 Q. And did those Nordsman Gibb products include
20 snap shackles?
21 A. No, sir.
22 Q. Are you aware of any -- strike that.
23 MR. HARRIS: Now that we have
24 established that the presentation had to do with
25 Nordsman Gibb product and not snap shackles, and

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1 certainly not trigger latch shackles, I am going
2 to object to any further questioning in this
3 line because it has nothing to do with anything
4 in this case and specifically any area in the
5 notice.
6 Q. (By Mr. Thompson) Are you, sir, aware of how
7 Lewmar sales information is retained in the
8 company?
9 A. Yes, sir.
10 Q. Okay. Now, for instance what is the American
11 agent or distributor?
12 A. Lewmar, Inc.
13 Q. Is Lewmar, Inc., sales information availability
14 to -- is it Lewmar Limited? Is that the name of
15 the English corporation?
16 A. Yes, sir.
17 Q. Is Lewmar, Inc., the U.S. agent sales
18 information available to you at Lewmar Limited?
19 A. They will supply it to us if requested.
20 Q. Have you asked Lewmar, Inc., if they have any
21 information about sales of trigger latch
22 shackles in the American market?
23 MR. HARRIS: I object to the form of
24 the question. Overly broad in regard to sales
25 of trigger latch shackles. You can answer.

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1 A. I haven't directly asked them that, sir.
2 Q. (By Mr. Thompson) Does anyone that reports to
3 you, do you know if anyone that reports to you
4 has asked for a report from Lewmar, Inc., about
5 the sales of trigger latch shackles in the
6 United States?
7 A. The person that would have asked that question
8 is Matthew Townsend, who is product manager.
9 Q. Has Mr. Townsend reported to you that he did or
10 did not make that inquiry?
11 A. No, sir.
12 Q. Have you asked -- have you undertaken in any way
13 to determine whether or not trigger latch
14 shackles have been used for non-marine
15 applications in the United States?
16 A. The action I have taken has been to check
17 through our records in terms of any legal claim,
18 insurance claims. Beyond that, no, sir.
19 Q. Okay. so you've only checked to see if you
20 were sued or if somebody made a claim because of
21 a non-marine application. Is that right?
22 A. That's correct, sir.
23 Q. Have you undertaken to find out if non-marine
24 sales have occurred?
25 MR. HARRIS: I object to the form of

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1 the question in regard to what a non-marine sale
2 is. Ask him about what a customer does when he
3 walks in off the street at a boat supply shop
4 and buys a shackle?
5 MR. THOMPSON: Sure.
6 Q. (By Mr. Thompson) Let me be more specific in
7 response to Mr. Harris' question. Have you
8 undertaken any efforts to determine whether or
9 not trigger latch shackles have been utilized
10 for non-marine applications in the United
11 States?
12 A. The only time I have become aware of it is post
13 this incident.
14 Q. Okay. After this accident, have you determined
15 that there were non-marine applications
16 occurring for trigger latch shackles in the
17 United States?
18 A. I understand that one of our -- one customer did
19 purchase them for non-marine use.
20 Q. Okay. And what customer was that?
21 A. Action Specialists.
22 Q. Have you checked to see if any other customers,
23 wherever they are located, not just the U.S.,
24 but throughout the world where this product is
25 distributed, have you checked to see if any of

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1 your customers are using trigger latch shackles
2 for non-marine applications?
3 A. We have issued the notice to our subsidiaries
4 regarding it, and on a more general basis we are
5 taking advice as to what we should do in the
6 future to stop any or to attempt to stop any
7 non-marine use of our product.
8 Q. Okay. But my question is, have you done
9 anything to try and determine whether or not
10 non-marine use was occurring by anyone other
11 than Action Specialists?
12 A. I personally have not, sir.
13 Q. Do you know if anyone in the company has done
14 that?
15 A. I am not aware, sir.
16 MR. THOMPSON: Now, Mark, if I am
17 understanding this right, Mr. Swales has been
18 designated to testify in response to paragraph
19 two of our cross-notice, which says that among
20 other things that he would be the person most
21 knowledgeable about all known uses of products,
22 distribution of products, oversight of product
23 sales. Is that correct?
24 MR. HARRIS: I believe No. 2
25 specifically refers to the method, manner or

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1 policy retaining various documents.
2 MR. THOMPSON: Correct.
3 MR. HARRIS: Then you described what
4 those documents are. If you are asking him
5 about sales in the United States, which would be
6 relevant, or in the world, which I don't think
7 would, but to the extent it could ever be
8 construed to be relevant, Mr. Townsend could
9 respond to that.
10 MR. THOMPSON: Okay.
11 Q. (By Mr. Thompson) I understand, sir, that you
12 are aware that one client, Action Specialists,
13 was buying these trigger latch shackles for
14 non-marine application. Is that correct, sir?
15 A. Yes, sir.
16 Q. How did you become aware of that?
17 A. It came in discussions with counsel.
18 Q. Outside the presence of counsel, have you spoken
19 to anyone at Action Specialists?
20 A. I have not.
21 Q. Have you spoken to anyone in the Lewmar
22 companies that dealt directly with Action
23 Specialists?
24 A. I have not, sir.
25 Q. Do you know to what uses Action Specialists was

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1 putting the Lewmar trigger latch shackle?
2 MR. HARRIS: If you have any
3 independent knowledge other than through
4 counsel, you can answer.
5 MR. THOMPSON: Again, I don't think
6 the fact that you tell him what the facts are
7 makes it privileged.
8 MR. WICKENS: I think you're wrong.
9 Q. (By Mr. Thompson) Do you know what Action
10 Specialists was doing with Lewmar trigger latch
11 shackle?
12 A. I understand that they requested trigger latch
13 shackles for the dragging of props on a set.
14 Q. Do you know how many?
15 MR. HARRIS: How many what?
16 Q. (By Mr. Thompson) How many trigger latch
17 shackles Action Specialists purchased for
18 non-marine application?
19 A. I believe they purchased 24.
20 Q. Do you know over what period of time those
21 purchases occurred?
22 A. Not precisely, sir.
23 (Off the record).
24 Q. (By Mr. Thompson) Do you have any understanding
25 as to the approximate period of time that the --

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1 over the period of time approximately -- I know
2 you have said not specifically -- that these 24
3 trigger latch shackles were purchased by Action
4 Specialists.
5 A. I believe it was during the period '98, '99.
6 I'm not certain.
7 Q. Do you know where the documents are retained
8 that would reflect those sales?
9 A. They are retained in Gilford.
10 Q. That's Gilford, Connecticut?
11 A. Yes, sir.
12 Q. Do you know who the individual responsible for
13 the Action Specialists account at Lewmar Limited
14 is?
15 A. It came through our California office.
16 Q. Do you know who the person is in California that
17 dealt with Action Specialists?
18 A. I cannot recall his name at the moment.
19 Q. It is a gentleman?
20 A. Yes.
21 Q. And was that individual account person or the
22 account relationship throughout 1998 and 1999?
23 A. I believe so.
24 Q. Now, the California office, do you know where
25 it's located?

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1 A. No, sir.
2 Q. Is that same individual still responsible for
3 the Action Specialists account?
4 A. We no longer supply to Action Specialists, sir.
5 Q. Who made that decision?
6 A. Mr. Blanton.
7 Q. Have you been told why Mr. Blanton decided to no
8 longer supply shackles to Action Specialists?
9 A. Because we discovered what they were using them
10 for.
11 Q. Am I correct in understanding from that answer
12 that you considered the use that Action
13 Specialists was putting the trigger latch
14 shackles to improper?
15 A. In terms of the -- or in our case absolutely
16 yes, sir.
17 Q. To your understanding what made that use
18 improper?
19 A. Again, I'm not technical. The trigger latch
20 shackle that was used is designed for release
21 under load. It is not designed to hoist people
22 up or down. It's purely designed as a marine
23 product for use with a spinnaker.
24 Q. It's not designed to release under load
25 accidentally, is it?

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1 MR. HARRIS: I object to the form of
2 the question as vague and ambiguous, lacks
3 foundation.
4 Q. (By Mr. Thompson) Am I correct in understanding
5 that the product is designed so that any release
6 must be an affirmative decision by someone to
7 release it? It doesn't just, when the load
8 occurs, it doesn't automatically release. Is
9 that right?
10 A. That is correct, sir.
11 Q. It is designed so that an individual, someone
12 can decide to release it even though it's under
13 load. Is that correct?
14 A. That is correct, sir.
15 Q. All right. And so what about the use to which
16 Action Specialists was putting the trigger latch
17 shackle made it inappropriate for -- an
18 inappropriate application?
19 A. The product is not designed to lift people. It
20 is designed for use on a sailboat with a
21 spinnaker.
22 Q. Did you have an understanding that Action
23 Specialists was using the trigger latch shackle
24 to hoist or lower people?
25 A. Not until after the incident, no, sir.

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1 Q. And when you say the instance, are you talking
2 about Mr. Hart's accident?
3 A. Yes, sir.
4 Q. How did you find out about this?
5 A. Personally I found out when this memorandum came
6 around.
7 Q. And you are talking about Exhibit 246?
8 A. Yes.
9 Q. So you learned in June of 1999 that Action
10 Specialists had been utilizing a Lewmar trigger
11 last shackle to hoist or lower people?
12 A. No, sir. I didn't know at that time that Action
13 Specialists were the company doing it.
14 Q. You knew that someone had been doing it?
15 A. Yes, sir.
16 Q. Have you asked anyone at the company if trigger
17 latch shackles should or should not be used to
18 hoist people or lower people?
19 A. Yes, sir.
20 Q. Who have you asked?
21 A. We have had discussions with Mr. Townsend and
22 Mr. Gibson. I have also had discussions with
23 people from Nordsman Gibb who are regular
24 sailors.
25 Q. Who are those individuals that you talked to?

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1 A. Mr. Peter Weeden, W-E-E-D-E-N.
2 Q. Anyone else at Nordsman Gibb?
3 A. No, sir.
4 Q. Have you ever been told that trigger latch
5 shackles are sometimes used to hoist sailors up
6 the mast to work on sails?
7 A. My understanding, sir, is that trigger latch
8 shackles are not used for that purpose.
9 Q. I want to make sure I understand your answer.
10 Are not to be used or are not used?
11 A. Not used.
12 Q. Has anyone ever told you --
13 MR. WICKENS: Don't we have that for
14 somebody else? You have that in your notice.
15 A. Matthew was to talk about that.
16 MR. WICKENS: If you are going to ask
17 everybody on here every single question you are
18 going to be here for a long time.
19 MR. THOMPSON: We will narrow it, but
20 we may be here a while.
21 Q. (By Mr. Thompson) Do you have any documents in
22 your possession or are you aware of any
23 documents in the company that would indicate
24 that the trigger latch shackle has ever been
25 used to hoist sailors up the mast?

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1 A. I am not aware of any.
2 Q. Has anyone ever told you that they were aware of
3 trigger latch shackle being used in that way?
4 A. Not a trigger latch shackle, no.
5 Q. What kind of shackle is sometimes -- is there a
6 shackle that is sometimes used to hoist sailors
7 up a mast?
8 MR. ROBB: Let me object. If it is
9 not a trigger latch, it has nothing to do with
10 this case, and it is certainly outside both the
11 scope of both of the WWF and the plaintiff's
12 notice.
13 MR. HARRIS: I would join in that
14 objection.
15 Q. (By Mr. Thompson) Do you know of any snap
16 shackle that's used?
17 A. I understand that on rare occasions people may
18 use a plunger shackle. It is certainly not
19 recommended.
20 Q. What is the basis of that understanding?
21 MR. ROBB: Could I just have a
22 continuing objection on the fact that this is
23 outside of the trigger latch? I don't want to
24 interrupt you. If you would just give me a
25 continuing objection, we can just flow through,

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1 and I won't interrupt you.
2 MR. THOMPSON: Yes.
3 A. You are better talking to Matthew Townsend with
4 discussions particularly with him that this has
5 come up.
6 Q. (By Mr. Thompson) Okay. But you understood
7 from Mr. Townsend that a plunger shackle is
8 sometimes used in hoisting a sailor up a mast?
9 A. Very occasionally.
10 Q. But is Mr. Townsend the origin of your
11 understanding that that sometimes occurs?
12 A. No. I have also spoken to Mr. Weeden, who is
13 also an experienced sailor. They have said
14 neither of them would consider doing it
15 themselves.
16 Q. They were aware that some people do that?
17 MR. ROBB: I am going to object.
18 That calls for speculation as to what someone
19 else may have been aware of.
20 Q. (By Mr. Thompson) Did they tell you they were
21 aware of that occurring?
22 A. That it occasionally occurred, yes.
23 Q. Are you aware of duct tape ever being used to
24 wrap around a trigger latch shackle to prevent
25 it from opening?

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1 A. What is duct tape, sir?
2 Q. Gray tape. I don't know whether it's call the
3 same thing in Britain but just a heavy, sticky
4 tape that is called duct tape in the United
5 States.
6 A. Okay. I am not aware of it, no, sir.
7 Q. None of your sailor friends have told you that
8 duct tape is sometimes wrapped around?
9 A. No, sir.
10 (Recess).
11 Q. (By Mr. Thompson) I am going to hand you, sir,
12 what's been marked as Exhibit 87 -- or Exhibit
13 10, and I want to ask you about a number 87 that
14 is inscribed on the exhibit. Do you know what
15 that number means?
16 A. That would designate when it was manufactured.
17 Q. So that one was manufactured in 1987. Is that
18 correct?
19 A. I believe so. Mr. Gibson would give you a --
20 (Off the record).
21 Q. (By Mr. Thompson) You are pointing out, sir,
22 that Exhibit 10 says what?
23 A. L-8.
24 Q. Okay. L-8. Do you know what L-8 means?
25 A. It will specify the year of manufacture.

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1 Q. Do you know what the year was?
2 A. No, sir.
3 (The reporter marked Deposition
4 Exhibit No. 300 for identification.)
5 Q. (By Mr. Thompson) I am going to hand you what's
6 been marked as Defendant's Exhibit 300. And is
7 that also a Lewmar trigger latch shackle?
8 A. Yes, sir, it is.
9 Q. And does it have a number or letters inscribed
10 on it in a similar to Exhibit 10?
11 A. It says 97F.
12 Q. Do you know what the significance of those
13 numbers and the F mean?
14 A. Again, it would be the year of manufacture.
15 Q. Okay. So that was 1997?
16 MR. HARRIS: If you know.
17 A. I don't know.
18 Q. (By Mr. Thompson) Is it your understanding from
19 the company that that would tell you that the
20 trigger latch shackle was manufactured in 1997?
21 A. That would tell you the year it was
22 manufactured. Mr. Gibson will confirm. I
23 presume it does mean '97.
24 Q. One point that I see differently between Exhibit
25 10 and Exhibit 300. I see on Exhibit 10 where

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1 it says, use spike to open?
2 A. Uh-huh.
3 Q. On both sides as you pointed out earlier. It
4 only says it on one side on Exhibit 300. Is
5 that right?
6 A. That is correct, sir.
7 Q. Do you know why the change?
8 A. No, I do not, sir.
9 Q. And do you know what model number Exhibit 300
10 is?
11 A. No, sir. I will have to read it on the back.
12 Q. Would you read it and please tell us?
13 A. 19512000.
14 Q. Is it your understanding that that is the same
15 model of trigger latch shackle that was used as
16 a part of the harness system in connection with
17 the accident that occurred in Kansas City?
18 A. Yes, sir.
19 Q. Do you know what model Exhibit 10 is?
20 A. It's the same one, sir.
21 Q. Is there anything on that that tells you or is
22 it just by looking at it?
23 A. Just by looking at it, sir.
24 Q. Are there any product catalogs utilized by any
25 of the Lewmar or Lewmar related companies that

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1 exhibit trigger latch shackles other than what
2 has been produced here today, and specifically
3 I'm talking about the 1998 and 1999 catalogs?
4 Are there any other catalogs that have trigger
5 latch shackles in them, Lewmar trigger latch
6 shackles?
7 A. No, sir.
8 Q. How about Nordsman Gibb's trigger latch
9 shackles?
10 A. The Nordsman Gibb marine catalog has.
11 Q. Is there any non-marine sales? And I don't want
12 to get caught up just on catalog, brochures,
13 listings, documents or information where the
14 Nordsman Gibb trigger latch shackle is
15 advertised or marketed in non-marine
16 applications?
17 A. I am not aware that there are any non-marine
18 marketing uses for the Nordsman Gibb trigger
19 latch shackle.
20 Q. Okay. So the answer is no, there are no other
21 catalogs?
22 MR. HARRIS: I object to the
23 question, asked and answered. He answered it.
24 Q. (By Mr. Thompson) Is that right, sir?
25 A. Yes, it is.

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1 Q. Besides '98 and '99 -- I want to make sure we
2 are clear, '96, '97, 2000, are you aware of any
3 other catalogs or advertisements that show
4 non-marine use of trigger latch shackles beyond
5 the marine catalogs?

6 MR. HARRIS: Are we talking about
7 Nordsman Gibb? We talking about Lewmar?

8 MR. THOMPSON: Both.

9 MR. HARRIS: I object to the form of
10 the question, overly broad and irrelevant. You
11 can answer.

12 A. No, sir.

13 Q. (By Mr. Thompson) Would you please look at
14 Exhibit 31, please. I would like to direct your
15 attention to the paragraph three that Mr. Robb
16 asked you to read before.

17 A. (Witness complies).

18 Q. Am I correct in understanding that this patent
19 states that the shackles are used especially in
20 marine sports?

21 A. Yes, sir.

22 Q. Have you had any discussion with anybody in the
23 company as to whether -- the meaning of the term
24 especially? Is it limited to marine sports?

25 A. I have had no discussions as to the meaning of

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1 the word.

2 Q. Do you have any opinion personally as to whether
3 there are any other uses?

4 A. I am not aware of any other uses.

5 Q. You are aware of the uses that Action
6 Specialists put the trigger latch shackles to.
7 Is that correct?

8 A. Yes.

9 MR. HARRIS: I object to the form of
10 the question. Vague as to time. Let's make
11 sure we know what timeframe we are talking
12 about.

13 Q. (By Mr. Thompson) What do you understand the
14 word "especially" to mean, sir?

15 MR. ROBB: I object to the fact that
16 it lacks any conceivable context or parameters
17 for him to be able to reasonably answer that
18 question.

19 MR. HARRIS: Bob, are we talking
20 about the patent application again, or are you
21 just talking generally about the definition of
22 the word especially to Mr. Swales personally.

23 MR. THOMPSON: Mr. Swales.

24 MR. HARRIS: Separate and part from
25 what it means for a patent application.

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1 Otherwise it's vague, ambiguous, lacks
2 foundation.

3 Q. (By Mr. Thompson) What it says, sir, in the
4 patent application is that the shackles are used
5 especially for marine applications, do you have
6 any understanding of the meaning of the word
7 especially?

8 MR. ROBB: Well, I am going to object
9 to the extent, as Mr. Harris pointed out it
10 lacks foundation, specifically to the extent
11 that he has not been shown to have any
12 experience with patent or trademark to know
13 whether or not that is some term of art within
14 that particular industry.

15 Q. (By Mr. Thompson) Do you have any understanding,
16 sir?

17 A. I do not understand that it is any different to
18 using the word in any other context.

19 Q. And especially, what does it mean to you in any
20 other context?

21 MR. HARRIS: Same objection.

22 A. Particularly, in particular.

23 Q. (By Mr. Thompson) Primarily, but not
24 exclusively? Would this be a fair
25 characterization?

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1 A. Yes, sir.

2 Q. You understand how a lanyard was used in
3 connection with Exhibit 10, the trigger latch
4 shackles?

5 MR. ROBB: I am going to object to
6 the fact that is outside of the scope of what
7 this witness is designated for.

8 MR. THOMPSON: He answered the
9 Interrogatories that discussed the use of the
10 lanyard, and you inquired with him about the
11 patent application, which also discusses the use
12 of the lanyard.

13 MR. ROBB: That is within the notice.

14 MR. HARRIS: Mr. Swales is the
15 finance director and as such signed the
16 Interrogatory Answers on behalf of the company.
17 We are here on corporate representative
18 depositions, and we have already told you what
19 categorize Mr. Swales is here to talk about.
20 And how to use a lanyard or not use a lanyard
21 under what circumstances, what application, that
22 is an engineering or technical area which
23 Mr. Gibson can talk about. So why don't we not
24 waste time in asking the finance director about
25 a technical engineering type question.

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1 MR. THOMPSON: I will move on.
2 Q. (By Mr. Thompson) me ask you this. Are you
3 aware of any policies or procedures regarding
4 the distribution of the snap shackle by Lewmar?
5 MR. HARRIS: Are we talking about the
6 trigger latch shackle or every trigger --
7 MR. THOMPSON: Trigger latch shackle.
8 Q. (By Mr. Thompson) Does the company have any
9 policies or procedures in place regarding the
10 distribution of trigger latch shackles?
11 A. We have no policies regarding particularly the
12 distribution of trigger latch shackles.
13 Q. And do you have any -- are you aware after the
14 1998 meeting we talked about earlier in which it
15 was discussed that non-marine applications
16 should be limited, are you aware of any policy
17 that was put in place regarding that issue?
18 A. I am not, sir.
19 Q. Did management put any formal writings out other
20 than the memorandum that was sent to
21 distributors and agents in Holland regarding the
22 distribution of the snap shackles?
23 A. I wasn't an employee of the company on that
24 date, sir. I'm not aware.
25 Q. But you have been designated as the person with

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1 most knowledge about the policies and
2 procedures.
3 A. Yes.
4 Q. And have you undertaken to determine if any
5 existed?
6 A. I am not aware that any existed.
7 Q. Okay. That is a result of an effort to find
8 out; is that right?
9 A. Yes, sir.
10 Q. Did you have an understanding that the insurers
11 of the company instructed Lewmar to make sure
12 that the trigger latch snap shackles were not
13 used in non-marine applications?
14 A. What timeframe are we talking?
15 Q. Well, in 1996 have you learned that the insurers
16 raised the issue?
17 A. I am not aware that they did.
18 Q. I would like for you take a look at Exhibit 124.
19 You see that that references --
20 A. Yes.
21 Q. -- the insurers. Do you know who the company's
22 insurers were at the time?
23 A. Yes, sir.
24 Q. Who were they?
25 A. It was through Aon, A-O-N, Risk Services, who

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1 were our brokers.
2 Q. Have you undertaken to find out what the
3 insurers told the company about making sure that
4 there were non- -- that non-marine applications
5 were not utilized for the trigger latch
6 shackles?
7 A. No, sir.
8 Q. Do you know who the person at Aon Risk Services
9 was that communicated with Lewmar?
10 A. If there was a communication, I do know who it
11 would be.
12 Q. Who would that have been?
13 A. A gentleman called Phil Roberts.
14 Q. Have you researched and reviewed the files of
15 the company to determine if there was any
16 communication between the insurance company and
17 Lewmar regarding non-marine use of trigger latch
18 shackles?
19 A. No, sir.
20 MR. ROBB: Excuse me. I need to
21 interpose an objection, Bob, in terms of all the
22 insurance. Can I just have a continuing
23 objection on that for relevance, foundation and
24 scope grounds? I just don't want to interrupt
25 you every time. Bob?

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1 MR. THOMPSON: Yes. Thank you.
2 MR. HARRIS: And Bob, I want to make
3 sure what timeframe we are talking about. Your
4 question did not have any timeframe whatsoever.
5 So if we are talking about post Owen Hart
6 incident, then that would include the
7 insurer/insured work product privilege area.
8 MR. THOMPSON: Well, I specifically
9 was tying it to 1996 when, as I understand from
10 Exhibit 124, Lewmar's insurer advised you to
11 take every possible step to insure that Lewmar's
12 products were used only for the purpose in which
13 they were designed.
14 Q. (By Mr. Thompson) Is that your understanding of
15 what the insurers told Lewmar?
16 A. I cannot say what the insurers told us. It may
17 have been that it was used to reinforce the
18 message we were sending to our subsidiaries.
19 Q. Well, the message that was sent to -- the, memo
20 Exhibit 124, that was sent to your subsidiaries
21 said that the insurers had told you to use every
22 possible step necessary. Is that correct?
23 A. Yes, sir.
24 Q. And the only step that you are aware of that was
25 taken was that Exhibit 125 and 124 were sent to

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1 the Holland agents and distributors. Is that
2 right?
3 A. Yes, sir.
4 Q. And so in terms of taking every possible step
5 necessary, sending out Exhibit 124 and 125 is
6 all that you know that was done. Is that right?
7 A. Yes, sir. I would like to reiterate that the
8 message about the insurers may are simply been
9 put in to reinforce our message. It may not
10 have come from the insurers.
11 Q. Okay. So you are saying that somebody in the
12 company might have put in there that the
13 insurers told you to do that, even though that
14 might not have been true?
15 A. I can envision it, yes, sir, but it strengthens
16 what you are saying to your subsidiaries.
17 Q. Do you know or not know whether or not the
18 insurers --
19 A. I don't know.
20 Q. -- instructed you to do that?
21 A. I'm not aware.
22 Q. Have you undertaken any efforts to find out?
23 A. No, sir.
24 Q. And in terms of at the time that the letter --
25 and again I'm talking about Exhibit 124 -- was

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1 sent out, do you know if any effort was taken to
2 communicate the same message to the other
3 subsidiaries at Lewmar Limited?
4 A. I am not aware, sir.
5 Q. You are not aware of any steps being taken to
6 communicate that message?
7 A. If there was resources.
8 Q. And in terms of establishing any policy or
9 procedure to make sure that non-marine
10 applications were not -- the trigger latch
11 shackles were not utilized for non-marine
12 applications, you are not aware of any policy or
13 procedure that was put in place other than to
14 the extent this could be construed as policy and
15 procedure?
16 A. No, sir.
17 Q. When I say this, we are talking about Exhibit
18 124 and 125.
19 MR. ROBB: Are we done with the
20 insurance stuff? Very briefly, plaintiffs would
21 move to strike reference to insurance or
22 insurers in the last number of questions as
23 cummulatively outside of the scope of this
24 witness' designation, outside of the notice,
25 irrelevant and further lacking foundation for

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1 personal knowledge as to this witness.
2 MR. THOMPSON: And to the extent that
3 this is an issue later we reserve our response
4 to that objection so that we can raise the issue
5 at a different time.
6 MR. ROBB: Sure.
7 Q. (By Mr. Thompson) Are you aware of any claims
8 made against Lewmar beyond this lawsuit as a
9 result of any claimed failure of a trigger latch
10 shackle?
11 A. No, sir.
12 Q. Never --
13 MR. ROBB: I am going to object to
14 the extent that the claim is not as to the
15 failure of a trigger latch shackle. I think it
16 misstates what the claim is and to that extent
17 lacks foundation on this record.
18 Q. (By Mr. Thompson) Let me make this so it would
19 be even broader. Even if there was not a claim
20 that the shackle failed, beyond this lawsuit,
21 are you aware of any claims involving any kind
22 of accident in which a trigger latch shackle was
23 utilized?
24 A. The only incident we are aware of is the bungee
25 jumping, and we are not certain that that was a

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1 trigger latch shackle.
2 Q. Do you know what steps or did the company take
3 any steps to try and determine the circumstances
4 surrounding the bungee jumping accident?
5 A. I am not aware what steps were taken. You may
6 find that Mr. Gibson and Mr. Townsend have
7 better knowledge on that.
8 MR. ROBB: Let me just interpose an
9 objection to the extent that I don't believe
10 there has been a foundation on this record that
11 it was a trigger latch shackle involved with the
12 bungee jumping incident, so to that extent then
13 there would be a lack of foundation on this
14 record.
15 Q. (By Mr. Thompson) How many kinds of snap -- you
16 have said, I think, earlier that snap shackles
17 is a generic term?
18 A. Yes, sir.
19 Q. What different forms of snap shackles are there?
20 Is the trigger latch shackle a form of a snap
21 shackle?
22 MR. ROBB: I am going to object to
23 the extent that this is outside. This is an
24 engineering technical matter. This is the
25 finance director. I think it is clearly outside

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1 of the designated subject matter.
2 MR. HARRIS: If we are just talking
3 very basic information, Bob, I will let him
4 answer.
5 MR. THOMPSON: We are.
6 MR. HARRIS: You can get this
7 information from Mr. Gibson or Mr. Townsend.
8 A. My understanding is that there is the trigger
9 latch shackle, and there is a plunger shackle,
10 which is the one I have here.
11 Q. (By Mr. Thompson) And they would both be --
12 could be generically referred to as snap
13 shackles?
14 A. Yes, sir.
15 Q. Those are the only two to your understanding,
16 two forms?
17 A. To my understanding.
18 Q. I want you to take a look, please, sir, at
19 Exhibit 124. And it says to who?
20 A. Dear sir.
21 Q. No. I'm sorry up here where it says to
22 Achternaam; is that right? Am I reading that
23 correctly?
24 A. You may be.
25 Q. Do you know who that is?

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1 A. I am afraid I don't speak Dutch.
2 Q. Do you know if that's an employee of Lewmar?
3 A. No.
4 Q. Who does the memo, Exhibit, 124 purport to be
5 from?
6 A. From Hendrik van der Linde.
7 Q. And Hendrik van der Linde is who?
8 A. He is the manager of the Dutch subsidiary.
9 Q. Okay. And so have you had any discussions about
10 Exhibit 124 with Mr. van der Linde?
11 A. No, sir.
12 Q. How did you obtain a copy of Exhibit 124? Where
13 did you actually get that document? Let me just
14 start this way. Have you seen it before today?
15 Have you seen a copy --
16 A. I have seen it before today.
17 Q. And did you gather it in connection with
18 producing documents in connection with this
19 lawsuit?
20 A. I didn't, but that is when it was gathered. It
21 was gathered prior to my taking over.
22 Q. Do you know, was that Ms. Waters that gathered
23 it?
24 A. Watts.
25 Q. Ms. Watts?

Page 115

1 A. I presume it was her, yes, sir.
2 Q. Do you know where she got it?
3 A. Again I can give you a presumption that it came
4 from Mr. van der Linde.
5 Q. Have you had any conversations with Mr. van der
6 Linde about the bungee jumping accident?
7 A. No, sir.
8 Q. Have you asked Mr. van der Linde if he is aware
9 of any other non-marine uses of trigger latch
10 shackles?
11 A. No, sir.
12 Q. Have you asked any of the other directors of the
13 Lewmar subsidiaries if they are aware of any
14 non-marine uses for trigger latch shackles?
15 A. No, sir.
16 Q. You don't know if they are aware or not; you
17 haven't asked. Is that right?
18 A. That is correct.
19 Q. After Exhibit 246 was sent out -- Now, would
20 that have gone to all the subsidiaries?
21 A. Yes, sir.
22 Q. Okay. And this is the one that was after the
23 Owen Hart accident that was sent to all the
24 subsidiary managers telling them not to sell the
25 trigger latch shackles for non-marine

Page 116

1 applications without prior approval. Is that
2 right?
3 A. Yes, sir, and included products other than the
4 trigger latch shackle.
5 Q. Okay. And have you had any response from those
6 subsidiary managers that you are aware of?
7 A. I have had no response back.
8 Q. Are you aware of anybody else in the company
9 having a response at which they reported back
10 that they either had or had not raised any
11 questions about Exhibit 246?
12 A. No, sir.
13 Q. Who is Helen Holt?
14 A. She was -- I'm sorry. She is now Helen Watts.
15 She got married as I remember.
16 Q. Okay. Have you had any discussion with
17 Ms. Watts to determine whether or not she
18 received any response after she sent out Exhibit
19 246?
20 A. No, sir.
21 Q. So she may have; you just don't know?
22 MR. ROBB: Objection. That calls for
23 utter speculation on behalf of this witness.
24 Q. (By Mr. Thompson) She may have or may not have.
25 You don't know one way or the other is what I

Page 117

1 want to make clear. Is that right?

2 A. Yes, sir.

3 Q. You told Mr. Robb in your opinion it would be

4 lunacy to use the trigger latch shackle in a

5 bungee jump.

6 A. Lunacy for anyone to do it, yes.

7 Q. Is there anything specific about the trigger

8 latch shackle that would make it lunacy to use

9 it?

10 A. Because it is a product that is designed to be

11 used under load.

12 Q. I will save that for Mr. Gibson. With regard to

13 the subsidiaries, five subsidiaries you

14 identified, do you know what the nature of the

15 corporate relationship is? Are they wholly

16 owned subsidiaries?

17 A. At what time point?

18 Q. Well, let's start --

19 A. It has changed.

20 Q. Presently.

21 A. Okay. Presently the Swedish operation is a

22 wholly owned subsidiary of Lewmar Marine

23 Limited, which is the same holding company as

24 Lewmar Limited. The French and Dutch operations

25 are branches of Lewmar Limited. The UK is

Page 118

1 Lewmar Limited. And America is owned by the

2 same ultimate holding company as Lewmar.

3 Q. So through various vehicles, Lewmar Limited or

4 its affiliates own the stock of the

5 subsidiaries?

6 A. Yes.

7 Q. Any of these companies publicly traded, these

8 subsidiaries?

9 A. No, sir.

10 Q. Are you aware of any warnings that are provided

11 to users of the trigger latch shackles?

12 A. Beyond the warning on the shackle itself and

13 comment in the catalog, no, sir.

14 Q. What comment in the catalog are you referring

15 to?

16 A. I have seen catalogs that show the two main

17 uses, the fid --

18 Q. Why don't you look at these two catalogs that

19 were marked earlier. Do you see anything in

20 those catalogs that you believe consists of a

21 warning to users of the product?

22 MR. HARRIS: And I believe this is

23 also an area that Mr. Townsend was designated to

24 discuss as the actual distribution and sale of

25 the product. By the way, so the record is

Page 119

1 clear, when you use the term fid, are you

2 talking about the spike?

3 THE WITNESS: Yes.

4 Q. (By Mr. Thompson) Are you aware of any

5 warranties?

6 A. Warranties.

7 MR. HARRIS: Warranties or warnings?

8 Q. (By Mr. Thompson) Warnings, I'm sorry. Any

9 warnings contained in these catalogs.

10 A. On the pages here there are no warnings.

11 Q. And you are looking at the two catalogs that

12 were marked earlier in the day?

13 A. I'm looking at a couple of pages from them, yes,

14 sir.

15 MR. ROBB: I just want to state for

16 the record so it is clear that that is not meant

17 to be and was not offered as being the entire

18 catalog but only a designated cover page and one

19 attachment.

20 Q. (By Mr. Thompson) Are you aware of any warnings

21 contained anywhere that are given to users of

22 the trigger latch shackle?

23 A. I think this question should be aimed at

24 Mr. Gibson and Mr. Townsend.

25 Q. My only question is are you aware, sir?

Page 120

1 A. I have seen things in older catalogs. I don't

2 know if they are in this one or not.

3 Q. You have seen warnings contained in older

4 catalogs?

5 A. I have seen drawings showing how to use the

6 trigger latch shackle.

7 Q. Please describe those drawings to me.

8 A. There was one showing a fid or spike going in

9 and one showing a hand going in, finger.

10 Q. Were those contained in Lewmar catalogs?

11 A. I believe so.

12 Q. Do you know what year those catalogs were?

13 A. No, sir.

14 Q. Are you aware of any warnings that were

15 distributed to any user or seller of trigger

16 latch shackles that warned against non-marine

17 use or applications other than the memos that

18 have been marked here already today?

19 A. Other than the statement in our warranties at

20 the back of the catalog, no, sir.

21 (The reporter marked Deposition

22 Exhibit No. 301 for identification.)

23 Q. (By Mr. Thompson) I am going to hand you what's

24 been marked as Defendant's 301. Does this

25 contain the warranty information that you are

Page 121

1 referencing?

2 MR. HARRIS: Again, I want to make

3 sure I heard you correctly. Did you say warning

4 or warranty?

5 MR. THOMPSON: I think it uses both.

6 My question is, is he aware of any warning, and

7 he said only in connection with the warranty.

8 A. I think I was mistaken, and so it should be in

9 the terms and conditions, which this is not a

10 full list of our terms and conditions.

11 Q. (By Mr. Thompson) Okay. So you believe there

12 is a warning regarding non-marine use in the

13 terms and conditions?

14 A. There is a statement along the lines of intended

15 use.

16 Q. What is your recollection of what that document

17 says? Mr. Harris, are you pointing at the --

18 MR. HARRIS: I think I know what

19 language he is referring to.

20 Q. (By Mr. Thompson) Has it been pointed out to

21 you language that you believe is the intended

22 use language?

23 A. Yes, sir.

24 Q. Now, would you read for us -- you are reading

25 from Defendant's Exhibit 301?

Page 122

1 A. Okay. It says failures due to use of products

2 in applications for which they are not intended.

3 Q. Is that the extent of the warning language that

4 you are referring to?

5 A. Yes, sir.

6 Q. It doesn't say what use is not intended, does

7 it?

8 A. No, sir, but it relates to the whole catalog,

9 not a single item.

10 Q. But it doesn't say to what use it is intended;

11 it just says that if you use it for an

12 unintended use, you are not going to warranty

13 the product. Is that right?

14 MR. ROBB: I object to the form of

15 the question that the extent that it is

16 argumentative, and the warranty language speaks

17 for itself.

18 Q. (By Mr. Thompson) You can answer.

19 A. The warranty is in a marine catalog, but no,

20 beyond that it does not list unintended uses.

21 (Recess).

22 (The reporter marked Deposition

23 Exhibits Nos. 302 through 320 for

24 identification.)

25 Q. (By Mr. Thompson) I want to go back. We are

Page 123

1 back after a short lunch break, but I want to

2 ask you about warnings, and I think just before

3 the break you mentioned that you believed there

4 was a warning on the trigger latch shackle

5 itself. Is that what you said?

6 A. Yes, sir.

7 Q. Okay. What words or language are you referring

8 to? We can use both Exhibits 10 and -- would

9 you hand me that one please -- and Defendant's

10 Exhibit 300.

11 A. They both say, use spike to open.

12 Q. Okay. And so you'd agree that -- and on Exhibit

13 300, it says it on one side and not the other?

14 A. Yes, sir.

15 Q. And that is a warning with regard to how to open

16 the trigger latch shackle; is that correct?

17 A. Yes, sir.

18 Q. Do you contend that that's a warning that

19 relates to the intended use of the product?

20 A. No. It's a warning as to how you should open

21 the snap shackle.

22 Q. It doesn't tell a potential user not to use this

23 product in non-marine applications, does it?

24 A. No, sir.

25 Q. Is it appropriate to use a lanyard to open the

Page 124

1 trigger latch shackle?

2 MR. HARRIS: I object to the form of

3 the question. Lacks foundation.

4 MR. ROBB: Outside of the scope of

5 the designation because it calls for a

6 engineering or technical opinion or statement.

7 MR. HARRIS: I join that, and I also

8 indicate that Mr. Gibson and/or Mr. Townsend

9 will talk about that.

10 Q. (By Mr. Thompson) Do you know, sir, if it is

11 improper to use a lanyard to open a trigger

12 latch shackle?

13 A. My only knowledge is from discussions with the

14 other gentlemen.

15 Q. I am going to hand you what has been marked as

16 Exhibit 303. It's Bates numbers LL 0215 through

17 217. What is that document, sir?

18 A. There is a copy of a sales order to Action

19 Specialists.

20 Q. Okay. And it says, W/C sales order at the top.

21 Is that correct?

22 A. Yes, sir.

23 Q. And it's dated 2/28/98. Correct?

24 A. Yes, sir.

25 Q. Now, what does W/C stand for?

<p style="text-align: right;">Page 125</p> <p>1 A. I have to say I'm not sure, sir. It may have 2 been an Americanism. 3 Q. Now, this is a sales order from who to Action 4 Specialists? 5 A. It is to Action Specialists. 6 Q. Okay. Who was the seller under this sales 7 order? 8 A. Lewmar Marine, Inc. 9 Q. All right now. So pursuant to this document, 10 Lewmar Marine, Inc., was selling the parts 11 listed on the sales order to Action Specialists 12 on or about February 2nd, 1998. Is that right? 13 A. Yes, sir. 14 Q. And what is Lewmar Marine, Inc., known as today? 15 A. Lewmar, Inc. 16 Q. Lewmar, Inc.? 17 A. Yes. 18 Q. So that is the American subsidiary of Lewmar 19 Limited? 20 A. Yes, sir. 21 Q. Down in the middle where it says description, 22 you see it says 50 percent discount, and then 23 set up as a tech center. Do you see those 24 words? 25 A. Yes, sir.</p>	<p style="text-align: right;">Page 127</p> <p>1 A. I don't know. 2 Q. Have you ever seen this sales order agreement 3 before? 4 A. Yes, sir. 5 Q. And have you discussed it with anyone? 6 MR. ROBB: Well, I am going to object 7 to that to the extent that it clearly 8 encompasses discussions with counsel, and I 9 don't think he should be allowed to testify 10 about it. 11 Q. (By Mr. Thompson) Have you discussed this 12 agreement with anyone other than your counsel? 13 A. No. 14 Q. If you would, look at the third page LL 0217. 15 It says special instructions John Kethan. Do 16 you see that? 17 A. Yes, sir. 18 Q. Who is John Kethan? 19 A. I don't know. 20 Q. And then the second, next one, old style trigger 21 shackles, do not substitute Gibb stock. Do you 22 know what that means? 23 A. I presume that it is a request to use the old 24 stock after we changed from Lewmar to Gibb 25 production.</p>
<p style="text-align: right;">Page 126</p> <p>1 Q. All right. What does 50 percent discount and 2 set up as a tech center mean in the context of 3 this sales order? 4 A. 50 percent discount means a 50 percent discount 5 off retail price. 6 Q. Does that suggested Action Specialists is a 7 wholesaler? 8 A. I don't know what the discount structure is in 9 America. Mr. Townsend may have a better guess. 10 Q. All right. Would it be Lewmar's practice to 11 provide a 50 percent discount to a retail 12 account? 13 MR. HARRIS: If you know. Again, 14 this is not an area that you were designated to 15 discuss. 16 A. I don't think -- Lewmar certainly would provide 17 a discount to somebody who was retailing our 18 product because retail price list is designed to 19 be the price the end user pays for the product. 20 Q. (By Mr. Thompson) Okay. But a 50 percent 21 discount off the price would suggest, wouldn't 22 it, that Action Specialists was going to offer 23 the product for retail? 24 A. Not necessarily, sir, no. 25 Q. What does set up as a tech center mean?</p>	<p style="text-align: right;">Page 128</p> <p>1 Q. Did you change from Lewmar to Gibb in 1999? 2 A. 1998. 3 Q. When in 1998? 4 A. Again, Mr. Townsend is the person to talk to. 5 Q. Do you have any knowledge as to why there would 6 be special instructions not to substitute Gibb 7 stock for the old style trigger shackle? 8 A. As I just said, I presume it is, so that we use 9 the old stock first. 10 Q. Then the last line is special instructions in 11 UK. Do you know what that means? 12 A. Well, no. It is -- the lines run together. Old 13 style shackle; do not substitute Gibb stock in 14 UK. It's not a separate -- it is not an 15 independent instruction. 16 Q. Taken together, does that instruction -- 17 A. Same answer. 18 Q. The same answer? 19 A. Yeah. 20 Q. Were you substituting Gibb's stock in the United 21 States but not in the United Kingdom? 22 A. No. I didn't say we were substitute the Gibb's 23 stock. What I said was that we were changing 24 from Lewmar to Gibb, and it makes sense to get 25 rid of the Lewmar stock before you start selling</p>

Page 129

1 the Gibb stock.

2 Q. I agree, but my question -- I didn't mean to

3 suggest that you did say that, but if that's

4 what you understand it to mean, where it says in

5 UK, does that suggest to you that you were

6 substituting the Gibb stock in places outside

7 the UK?

8 A. No.

9 Q. Were the sales orders filled out of the United

10 States subsidiary, or are they filled out of the

11 United Kingdom?

12 MR. HARRIS: Once again, sales is an

13 area Matthew Townsend was designated to respond

14 to. I don't think we need to --

15 MR. THOMPSON: I don't think that's

16 right, Mark.

17 MR. HARRIS: I know that's right. If

18 you want to talk about distribution and sales,

19 Matthew Townsend is going to be responding to

20 it. So --

21 A. Am I to answer?

22 Q. (By Mr. Thompson) You can answer. Do you know,

23 sir, whether or not sales orders are filled out

24 of the United Kingdom or the United States?

25 MR. ROBB: Objection. Outside of the

Page 130

1 scope of the notice.

2 MR. HARRIS: Same objection. Go

3 ahead and respond.

4 A. They should be filled out of the stock in the

5 U.S. Clearly if stock isn't there, they

6 wouldn't be.

7 Q. (By Mr. Thompson) Okay. Do you know where the

8 stock of trigger latch shackles in the United

9 States in 1998, where those shackles were

10 manufactured?

11 A. They were manufactured in the UK.

12 Q. And shipped to the United States for ultimate

13 distribution?

14 A. Yes, sir.

15 Q. At the time in 1998 did you have only one

16 manufacturing plant of trigger latch shackles?

17 A. You need to address that question to Mr. Gibson.

18 Q. Okay. I am going to hand you what's been marked

19 as Exhibit 304. If you would flip through these

20 documents which are LL 0146 through -- well,

21 second page is LL 0146 through LL 0190. Can you

22 look at this document and tell me what it is,

23 sir?

24 A. This looks like the Lewmar, Inc., customer list.

25 Q. And when you say Lewmar, Inc., again that is the

Page 131

1 United States subsidiary; is that correct?

2 A. Yes.

3 Q. Is this a customer list that you can access here

4 in the United Kingdom?

5 A. We could do so, yes.

6 Q. I mean, as finance director your computers are

7 networked with the United States subsidiary such

8 that you could print this list off as well?

9 A. I wouldn't. We could do it, yes, sir.

10 Q. A little more than halfway down on LL 0146, you

11 see the Action Specialists entry?

12 A. Yes, sir.

13 Q. And it says, do not ship to this account per R.

14 Blanton, 6/99. Is that correct?

15 A. Yes, sir.

16 Q. Did you have any discussions with Mr. Blanton

17 prior to this notation being put on the customer

18 shipping list?

19 A. No, sir.

20 Q. Do you know if anyone in Lewmar Limited did have

21 those here in the United Kingdom, did have any

22 discussions with Mr. Blanton about this entry?

23 A. I don't know, sir.

24 Q. Subsequent to its entry on the customer shipping

25 list not to ship to Action Specialists, have you

Page 132

1 had any discussions with Mr. Blanton about this

2 decision?

3 A. No, sir.

4 Q. Can you through the computer system access the

5 entire purchase history for Action Specialists?

6 A. Yes, sir.

7 Q. Am I correct in understanding this document as I

8 look at LL 0146; that Action Specialists'

9 customer number is ACTI 001?

10 A. Yes, sir.

11 Q. And would you be able to enter that customer

12 number --

13 A. No, sir, sorry. You are mistaken.

14 Q. Okay. In what? How am I mistaken?

15 A. ACTI 001.

16 Q. ACTI 0 and then 01?

17 A. Yes.

18 Q. Could you enter that customer number in the

19 computer and pull down the entire transaction

20 history of that customer?

21 A. It could be done, yes, sir.

22 Q. Have you done that before you came here today?

23 A. Personally, no, sir.

24 Q. Do you know if anyone on your staff has done

25 that?

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1 A. I'm not aware, sir.
2 Q. Have you made any attempt before you came here
3 today to determine how many trigger latch
4 shackles Action Specialists has ever purchased?
5 A. I believe they have only purchased around 24.
6 Q. Okay. That's what you referenced earlier?
7 A. Yes.
8 Q. Do you know how you made that determination?
9 A. I have seen two of the -- I believe they are
10 invoices, two documents that relate to it.
11 Q. Do you know if that information was accessed off
12 the computer system?
13 A. It almost certainly had to be, sir.
14 Q. Is there any way in reviewing this customer list
15 of knowing if any of the other customers listed
16 on these approximately 45 pages were purchasing
17 trigger latch shackles for non-marine use?
18 A. No, sir, there is not.
19 Q. Are you aware of any way that you could review
20 the invoices or the history of transactions in
21 the company and determine from those invoices
22 whether or not your customers or clients were
23 using -- purchasing trigger latch shackles for
24 non-marine use?
25 A. No, sir. No way.

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1 Q. Beyond the notices sent out, which we have
2 talked about today, 124, 125, 246 and anything
3 included in your catalog, are you aware of
4 anything that was done to tell the public the
5 trigger latch shackles should not be used in
6 non-marine applications?
7 A. No, sir.
8 Q. So whatever you've done, we have got in front of
9 us here?
10 A. Yes, sir.
11 Q. I am going to hand you what has been marked
12 Exhibit 305. For the rest of you, these are
13 the -- I think these are the corporate
14 organization charts. Is that correct?
15 A. Yes, it is.
16 Q. And do you know when these were -- are these
17 current for what time period?
18 A. I believe these are current certainly in
19 relation to the Lewmar Companies as today.
20 MR. THOMPSON: Mark, just for the
21 record, if we could, I can't read these. Could
22 you just provide us with better copies at some
23 point in the future?
24 MR. HARRIS: Yes. And for the
25 record, I believe this organizational chart was

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1 the organizational chart under which the Lewmar
2 entities were arranged at the time of the
3 May 23rd, 1999, incident, because there have
4 been some name changes, as I have already
5 advised all the parties of, as of January 1,
6 2000.
7 Q. (By Mr. Thompson) Did you see something you
8 wanted to correct, sir?
9 A. No. I was going to say this was the structure
10 when we were taken over by Clyde Shipping, which
11 was last June.
12 Q. I don't have any questions about it, but if we
13 could just get clean copies of the structure as
14 it existed then and now actually.
15 MR. SULLIVAN: You might just make a
16 general production. I don't think anybody's
17 copies are legible.
18 MR. HARRIS: Then it worked.
19 Q. (By Mr. Thompson) I will hand you Exhibit 306.
20 Do you know what this document is, sir?
21 A. Yes, sir.
22 Q. What is it?
23 A. A hardware warranty claim fault report.
24 Q. Have you ever seen these documents before, or
25 documents like this?

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1 A. No, sir.
2 Q. Is this something that is from Lewmar's business
3 records?
4 A. Yes, sir. I should point out they are signed by
5 Mr. Townsend.
6 Q. Okay. And so you think I should talk to
7 Mr. Townsend about that?
8 A. Yes.
9 MR. HARRIS: You might want to start
10 with Mr. Gibson.
11 MR. SULLIVAN: What were the Bates
12 numbers of that exhibit?
13 MR. THOMPSON: This document is LL
14 000196 through 199.
15 MR. SULLIVAN: That exhibit was 306?
16 MR. THOMPSON: Yes.
17 Q. (By Mr. Thompson) Before I mark these, are all
18 of the warranty claim forms more suitably
19 address today Mr. Gibson or Mr. Townsend?
20 A. Yes.
21 Q. Okay. Then I will hold off on those. What was
22 the reason, if you know, for the name change to
23 Lewmar Limited?
24 A. The reason for changing from Lewmar Marine
25 Limited to Lewmar Limited is that if you look at

Page 137

1 our advertising, it's the Lewmar name on its own
2 which is effectively the logo, so they decided
3 to drop the "marine" from the title.
4 Q. Okay. So the current advertising of the Lewmar
5 Companies drops marine from the title?
6 A. Yes.
7 Q. Is there any effort under way to expand sales of
8 Lewmar products outside of the marine --
9 A. No, sir.
10 Q. -- market?
11 A. No.
12 Q. I wanted to go back to the meeting in 1998
13 during which it was discussed that Lewmar snap
14 shackles should not be used outside of the
15 marine application. Is that right?
16 A. No, sir. What was discussed was Lewmar products
17 not being used outside the marine application.
18 Q. Who at Lewmar Limited -- or at the time it was
19 Lewmar Marine; is that correct?
20 A. Yes.
21 Q. Now Lewmar Limited, who ultimately had
22 responsibility for making sure that Lewmar
23 products were not used outside of the marine
24 application?
25 A. I guess ultimately responsibility lies with the

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1 CEO, but effectively it would be the subsidiary
2 managers.
3 Q. So subsidiary managers were to see that that
4 happened, but ultimately it was the
5 responsibility of the CEO to see that they did
6 their job?
7 A. Well, ultimately it's all their responsibility,
8 yes.
9 Q. The subsidiary managers, what is the reporting
10 structure? For instance, who does Mr. Blanton
11 report to?
12 A. At the time of the accident he reported direct
13 to Simon Hartley.
14 Q. Your CEO?
15 A. Yes.
16 Q. And Mr. Hartley again, he was the CEO in '98 as
17 well?
18 A. Yes.
19 Q. And Mr. Blanton was the subsidiary manager in
20 1998?
21 A. Yes.
22 Q. Mr. Blanton does not report to Mr. Hartley now?
23 A. No, he doesn't.
24 Q. Who does he report to?
25 A. Mr. McMillan.

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1 Q. Who is Mr. McMillan?
2 A. Mr. McMillan is the CEO of Clyde Shipping.
3 Q. Mr. Hartley's job -- why the change? Do you
4 know?
5 A. Because when we were bought out by Clyde
6 Shipping, they had other interests in America,
7 so they basically split responsibilities with
8 Simon, being UK, rest of the world, Arthur being
9 America. So it is just a change in reporting.
10 Q. And Mr. McMillan's first name is what?
11 A. Arthur.
12 Q. Arthur McMillan. And he has responsibility for
13 the American market?
14 A. Yes, sir.
15 Q. Where is Mr. McMillan officed?
16 A. Glasgow, Scotland.
17 Q. Are the catalogs -- we have seen some excerpts
18 of some of the catalogs today, Exhibit 30 and
19 Exhibit 29. Are these catalogs not intended for
20 the ultimate consumer, or are they wholesale
21 catalogs?
22 A. We would distribute the catalogs to our
23 customers, who are the boat builders or marine
24 distributors. They are available to the public
25 at boat shows, that kind of thing. They can be

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1 picked up. No, they are aimed at our customers.
2 Q. So as a general matter, the retail purchaser
3 from your customers probably would not see the
4 catalog? Is that a fair statement?
5 A. To them it's only one would be if they happened
6 to go into a show that happened to have one on
7 show.
8 Q. As a general matter they would not be purchasing
9 the products from like a mail order catalog?
10 This would be something that would be at the
11 retailer for use --
12 A. In the U.S. there are a couple of mail order
13 catalogs, but generally no.
14 Q. The mail order catalogs are they different than
15 the excerpts of the catalogs we are seeing here?
16 A. If it is a mail order catalog, it is not our
17 mail order catalog.
18 Q. Okay. It would be someone else's mail order
19 catalog that might include some of your
20 products?
21 A. Yes.
22 Q. But to the extent that Lewmar prepares a
23 catalog, these are it, and they are generally
24 intended for use by your customers, which are
25 the --

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1 A. The boat builders or the distributors, yes.
2 Q. Do you know if the trigger latch shackle like
3 Exhibits 300 and 10 have ever appeared in mail
4 order catalogs?
5 A. I believe they have, but I do not know for
6 certain.
7 Q. What companies have mail order catalogs?
8 A. The main one in the states is West Marine.
9 Q. West?
10 A. Marine.
11 Q. Any others that you can recall?
12 A. Not in America, no.
13 Q. In any other country?
14 A. In the UK there's Simpson Lawrence, XM Yachting.
15 In France, there's Technique Gremont. There
16 will be catalog companies in most areas.
17 Q. Do you know if any warning about purchasing the
18 trigger latch shackle for non-marine use is
19 included in those catalogs?
20 A. I don't know, but they are all marine
21 distributors.
22 Q. Back to the exhibit in front of you, which is
23 what exhibit?
24 A. 304.
25 Q. I have a question. Port Supply Limited appears

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1 as a customer on LL 0173. Could you find that,
2 please.
3 A. Yes.
4 Q. Do you know anything about this customer?
5 A. I believe they are owned by West Marine.
6 Q. Do you know if this is a customer that a company
7 called AMSPEC did business with?
8 MR. HARRIS: Any independent
9 knowledge of that?
10 A. I have no independent knowledge of it.
11 MR. THOMPSON: Well, regardless of
12 the source of information, if he knows if their
13 company did business with them, I am entitled to
14 know that.
15 MR. ROBB: I object to that. If it
16 was information supplied by counsel that is not
17 in the course and scope of his employment, but
18 through the attorney/client relationship.
19 MR. HARRIS: You might want to try
20 asking a timeframe or some other fashion, but
21 that question invades the attorney/client
22 privilege.
23 Q. (By Mr. Thompson) Have you determined, sir,
24 whether or not a company called AMSPEC purchased
25 trigger latch shackles from Port Supply

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1 corporation?
2 MR. ROBB: Same objection to the
3 extent it might encompass attorney/client
4 information. If he knows independently, that
5 would be one thing.
6 MR. THOMPSON: He is not your client,
7 Gary, and I don't believe that is a proper
8 objection interposed by plaintiffs' counsel.
9 MR. HARRIS: Well, I am going to
10 oppose it. I don't believe you have changed
11 your question in any respect, so since you
12 haven't, that would still invade the
13 attorney/client privilege.
14 MR. THOMPSON: Well, I will move on,
15 but for the record, facts simply because they
16 are communicated by counsel do not become
17 privilege. Either AMSPEC did business through
18 your distributor or they didn't. And the fact
19 that he may have learned it from you does not
20 make it privileged.
21 Q. (By Mr. Thompson) Now, is Port Supply Limited
22 Corporation a distributor of Lewmar products?
23 A. I believe they are a subsidiary of West Marine,
24 which is a distributor of Lewmar products.
25 Q. We are getting some invoices. Let me ask you to

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1 take a look another LL 0179 on the exhibit in
2 front of you, which is Exhibit 304. You see it
3 is Svendsen's Boat Works, Inc.?
4 A. Yes, sir.
5 Q. Am I pronouncing that correctly?
6 A. I believe so.
7 Q. S-V-E-N-D-S-E-N-S?
8 A. Yes, sir.
9 Q. Do you know if Svendsen's Boat Works, Inc., is a
10 distributor of Lewmar products?
11 A. Yes, they are.
12 Q. Have you -- do you know if Svendsen's sold
13 Lewmar trigger latch shackles to a company
14 called AMSPEC or A & M Specialty Products?
15 MR. HARRIS: Same objection,
16 attorney/client privilege.
17 Q. (By Mr. Thompson) Are you refusing to answer?
18 MR. HARRIS: To the extent you have
19 any personal knowledge information outside of
20 attorney/client privilege, you can respond to
21 the question. Do you have any personal
22 knowledge?
23 THE WITNESS: I don't have any
24 personal knowledge.
25 (The reporter marked Deposition

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1 Exhibit No. 321 for identification.)
2 Q. (By Mr. Thompson) Let me hand you what has been
3 marked as Exhibit 321. Can you identify these
4 documents?
5 MR. SULLIVAN: What are the Bates
6 numbers, please?
7 MR. THOMPSON: These are Bates
8 numbers AM 00012 through 16.
9 MR. HARRIS: For the record, since it
10 is clear these are documents that I believe
11 AMSPEC produced about a week or ten days ago --
12 MR. THOMPSON: Correct.
13 Q. (By Mr. Thompson) Have you ever seen these
14 documents before?
15 A. I believe I have seen a copy of them.
16 Q. And do these documents suggest that Port Supply
17 supplied trigger latch snap shackles to A & M
18 Specialty Products?
19 MR. HARRIS: I object to the form of
20 the question. Documents speak for themselves.
21 Lack of foundation as to whether this witness
22 has any personal knowledge.
23 MR. ROBB: Also it calls for
24 speculation to the extent that it asks him
25 whether or not it suggests, and I think it

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1 requires him to assume.
2 Q. (By Mr. Thompson) You can answer. Do you know?
3 A. Well, the first one says, order refused. Two of
4 the three are credit memos.
5 Q. Do you see where it says manufacturer name,
6 L-E-W-M-A?
7 A. Yeah. I am reading on the handwritten part,
8 wrong part order, refused.
9 Q. Yes, but I'm asking where it identifies
10 manufacturer name. Do you see L-E-W-M-A?
11 A. Yes.
12 Q. Then the manufacturer number, does that number
13 correspond to any Lewmar parts that you are
14 familiar with?
15 A. Yes, sir.
16 Q. What part does it refer to?
17 A. That is a trigger latch shackle.
18 Q. Have you had any discussions with anyone at Port
19 Supply regarding their sale of trigger latch
20 snap shackles to A & M Specialty Products?
21 A. I have not.
22 Q. There has been testimony in this case that a
23 representative of AMSPEC contacted one of your
24 distributors regarding using trigger latch snap
25 shackles in connection with stunt work. Have

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1 you undertaken any effort to determine whether
2 or not that that is true?
3 MR. HARRIS: Do you have any
4 knowledge outside the attorney/client privilege?
5 A. I have no knowledge of it.
6 Q. (By Mr. Thompson) And I just -- do you have any
7 knowledge whether that is true or false?
8 MR. HARRIS: Same objection, same
9 instruction.
10 A. I have no knowledge about whether it's true or
11 false.
12 MR. THOMPSON: All right, Mark. Just
13 so we are clear, as long as this witness is not
14 going to show up and testify that I have done an
15 investigation and that contact did or did not
16 occur, I will let it go. But if he has
17 knowledge or is going to be a witness that is
18 going to testify about that, I am entitled to
19 inquire.
20 MR. HARRIS: Well, my instruction was
21 on the basis of the broad question that you
22 asked, and the question invades the
23 attorney/client privilege. That was my
24 instruction to the witness. And if you have any
25 more questions, ask him. But I don't recall

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1 that being a topic on your notice that
2 Mr. Swales was going to talk about. But I don't
3 know what else I can tell you.
4 Q. (By Mr. Thompson) Are you aware of any facts,
5 sir, that suggest that contact between one of
6 your agents and distributors regarding the use
7 of trigger latch snap shackles in stunt work,
8 that that did or did not occur?
9 MR. HARRIS: I am going to object to
10 the form of the question in regard to agents or
11 distributors. I'm not sure if you are talking
12 about Port Supply or AMSPEC. Port Supply is on
13 the customer list. AMSPEC is not. It's vague
14 and ambiguous, lacks foundation.
15 MR. ROBB: Calls for speculation.
16 Q. (By Mr. Thompson) Specifically, sir, are you
17 aware of any fact that would -- let me rephrase
18 this. I am going to ask you about three
19 distributors of Lewmar products. Is Svendsen's
20 a distributor of Lewmar products?
21 A. Yes, sir.
22 Q. Is Port Supply a distributor?
23 A. Yes, sir.
24 Q. And is Action Specialists a distributor?
25 A. No, sir.

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1 Q. Were they at one time?
2 A. I don't believe we had any formal distribution
3 agreement with them.
4 Q. That wasn't my question. Distribution agreement
5 or not, were they a distributor of your
6 products?
7 A. I don't believe they distributed our products.
8 I believe they consumed them, used them
9 themselves.
10 Q. Let's start with Svendsen's and Port Supply.
11 Are you aware of any facts that or do you know
12 one way or the other whether or not AMSPEC or a
13 representative of a company called AMSPEC had
14 any discussions with Svendsen's or Port Supply
15 about using the Lewmar trigger latch shackle in
16 stunt work?
17 MR. HARRIS: Anything in terms of
18 your personal knowledge outside of any
19 discussions with attorneys.
20 A. I'm not aware of any such discussions.
21 MR. THOMPSON: And again, I believe
22 that the fact that factual information is
23 communicated by attorneys does not make what
24 wasn't privileged privileged, and so I think
25 it's an improper instruction to the witness not

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1 to answer.
2 MR. HARRIS: I would disagree. Go
3 ahead.
4 Q. (By Mr. Thompson) Now, let's talk about Action
5 Specialists. What do you know about the
6 business relationship in a general term between
7 Action Specialists and Lewmar Limited?
8 A. Limited or Lewmar Incorporated?
9 Q. Okay. Let's start with Lewmar, Inc. They have
10 bought or purchased some products from Lewmar,
11 Inc., some snap shackles and I believe some
12 D-shackles.
13 Q. Do you know if they were extended credit?
14 A. In the first case they paid on credit card. I
15 believe the second time they had an open
16 account.
17 Q. So Lewmar, Inc., to your knowledge extended open
18 account privileges to Action Specialists; is
19 that correct?
20 A. Yes, sir.
21 Q. Do you know of any other written -- do you know
22 of any written documents between Action
23 Specialists and Lewmar, Inc., regarding
24 possibility or regarding Action Specialists'
25 right to resell Lewmar Limited products?

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1 A. No, sir.
2 Q. Have you made any inquiry with anybody at
3 Lewmar, Inc., about the nature of the
4 relationship that it had with Action
5 Specialists?
6 A. No, sir.
7 Q. You haven't asked Randy Blanton or anyone who
8 the relationship between Action Specialists and
9 Lewmar, Inc., was?
10 A. The only action I have taken is to insure that
11 Action Specialists are off the current customer
12 list.
13 (Off the record).
14 Q. (By Mr. Thompson) Why did you do that?
15 A. I was informed about it.
16 Q. Pardon?
17 A. I was informed that that was the case.
18 Q. Well, why did you take action to see that they
19 were off the list?
20 A. Perhaps I should rephrase the answer. I was
21 made aware that they had been taken off the
22 list, so they are not a customer of ours today.
23 Q. Okay. And who took them off the list?
24 A. Randy Blanton.
25 Q. And did Randy Blanton tell you why he did that?

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1 A. No, sir.
2 Q. Do you know why he did that?
3 A. That would be my opinion. I can surmise.
4 Q. Okay. And what is your opinion?
5 A. Because they are using the trigger latch shackle
6 improperly, for all the wrong uses.
7 Q. Do you know when Lewmar, Inc., or anyone
8 affiliated with Lewmar first learned that Action
9 Specialists was using a trigger latch shackle in
10 a way that you believe to be improper?
11 A. In the way that it was used in this case, I
12 understand it was only after the accident.
13 Q. Okay. And what's the basis of that
14 understanding?
15 A. Discussions with other people.
16 Q. What other people?
17 A. Attorneys, Mr. Gibson, Mr. Townsend.
18 Q. Have you had any discussions with Mr. Gibson or
19 Mr. Townsend about that outside the presence of
20 counsel?
21 A. We have had general discussions, yes.
22 Q. Okay. I want to know about those discussions.
23 What have you been told regarding when Lewmar,
24 Inc., learned that -- first learned that Action
25 Specialists was using the trigger latch shackle

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1 in the way you believe to be improper?

2 A. Lewmar did not know that Action Specialists were

3 using the trigger latch shackle for this purpose

4 until after the accident.

5 Q. Okay. And how do you know what outside --

6 outside discussions with counsel, has anybody

7 told you -- if it's Mr. Gibson, if it's

8 Mr. Townsend, has anybody told you that that was

9 the case?

10 A. I have been told that was the case.

11 Q. By who?

12 A. It would -- I can give you a list of people who

13 it might have been.

14 Q. Okay. Let's start there?

15 A. Mr. Gibson, Mr. Townsend, Mrs. Watts,

16 Mr. Blanton.

17 Q. Anybody tell you how they determined that that

18 was the case?

19 A. No, sir.

20 Q. So you don't know any of the underlying facts;

21 you've just been told -- as you sit here today

22 you just have been told that Lewmar, Inc., did

23 not know that Action Specialists was using the

24 trigger latch shackles improperly until after

25 the accident?

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1 A. Yes, sir.

2 Q. What do you understand the improper use to be?

3 A. Using the trigger latch shackle to raise or

4 lower an individual from 78 feet, which it is

5 not designed for use lifting or raising people.

6 Q. Do you know when Lewmar, Inc., first learned

7 that Action Specialists was reselling trigger

8 latch shackles to AMSPEC or A & M Specialties?

9 A. No, sir.

10 Q. You don't have any personal knowledge as to when

11 that occurred?

12 A. No.

13 Q. Do you have any knowledge that would suggest

14 that Action Specialists was using trigger latch

15 shackles to also pull people, even though it

16 wasn't without regard to just raising or

17 lowering; that they were using it in stunt work?

18 A. When Action Specialists had discussions with our

19 people in California, they said they were using

20 it to pull props, not people.

21 Q. Did those props include people?

22 MR. HARRIS: Objection, asked and

23 answered.

24 MR. ROBB: He said props, not people.

25 MR. THOMPSON: I must not have

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1 understood that.

2 Q. (By Mr. Thompson) They said Action Specialists

3 told Lewmar -- told who at Lewmar, Inc.? Do you

4 know?

5 A. It was our representative in California.

6 Q. Who is that?

7 A. I'm trying to think. Bob -- I can't remember

8 his name.

9 MR. HARRIS: I think you have already

10 asked that question as well.

11 Q. (By Mr. Thompson) It's your understanding that

12 the Lewmar, Inc., representative in California

13 was told that Action Specialists was using the

14 trigger latch shackle to move props?

15 A. Yes.

16 Q. Was there any discussion of it being used in any

17 way to move people?

18 A. No, sir.

19 Q. Not just up and down, but in any respect?

20 A. No, sir.

21 Q. Was it acceptable to Lewmar, Inc., that the

22 trigger latch shackles be used in moving props?

23 A. I would have said it was an extravagant use of

24 the product.

25 Q. But it was approved; is that correct?

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1 A. I think the local gentleman took the decision

2 himself. I can't imagine that pulling props is

3 anything that would cause a problem.

4 Q. But at least on a local basis it was approved by

5 Lewmar, Inc., that Action Specialists would use

6 trigger latch shackle in that form. Is that

7 correct?

8 A. Yes, sir.

9 Q. And of course that is a non-marine application.

10 A. Yes, sir.

11 Q. I am going to hand you again Exhibit 124.

12 Again, in the heading blocks where it says to

13 and it has Octerman. You do not know who or

14 whether that is a person or a company; is that

15 correct?

16 MR. HARRIS: Objection, asked and

17 answered.

18 Q. (By Mr. Thompson) Okay. The next line where it

19 says company, what does that say?

20 A. Bedrijf.

21 Q. Do you know who that is?

22 A. I would guess that it has something to do with

23 the mail merge on the computer system.

24 Q. What?

25 A. I would guess it has something to do with mail

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1 merging.
2 MR. ROBB: I would object to guess or
3 speculation. I would ask that it be stricken.
4 MR. HARRIS: I don't want you to
5 guess. If you don't know, tell him you don't
6 know.
7 Q. (By Mr. Thompson) What is your best estimation
8 of what this is?
9 MR. HARRIS: If you know.
10 A. I don't know.
11 Q. (By Mr. Thompson) What do you believe that
12 would be? That is an issue of admissibility not
13 discovery?
14 A. I believe it may be connecting with a mail merge
15 system to pull names and addresses from a data
16 merging base.
17 Q. So you believe in a mail merging system that
18 that name or something like it would pull in a
19 whole --
20 A. Mailing.
21 Q. A mailing Matrix?
22 A. It might have.
23 Q. Would it be something that you could determine
24 from reviewing the Lewmar computer system who --
25 what the mailing group to be if you used the

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1 word B-E-D-R-I-J-F?
2 A. That is a Dutch word, so you would have to talk
3 to our subsidiary in Holland.
4 Q. If we use that -- assuming if we find out that
5 that's correct, then these are the companies
6 that would have gone by using that mailing
7 merger, that's who would have received this
8 notice. Is that correct?
9 A. Yes, sir.
10 Q. Now, do you have that capability for all of your
11 companies or your clients?
12 A. No. This would be not a local listing.
13 Q. Do you know if Lewmar, Inc., has the capability
14 of pulling together a mail merge document so
15 that they can send them a mass mailing to their
16 customers easily?
17 A. I don't know.
18 Q. Do you have that internally at Lewmar Limited?
19 A. Yes, we do, sir.
20 Q. I mean, if you wanted -- for instance, if you
21 will look at Exhibit 304, which lists all the
22 customers of Lewmar, Inc., in the United States,
23 do you have a mass ability through computer to
24 do a mass mailing to all those customers?
25 A. From this computer system it would be extremely

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1 difficult, sir.
2 Q. Well, from another computer system?
3 A. This is our computer system.
4 Q. Well, does Lewmar or Lewmar Inc., to your
5 knowledge have any computer system that would
6 allow you to easily pull together a mass mailing
7 to all your customers?
8 A. To pull it straight off the mailing system would
9 be -- I believe, would be difficult.
10 Q. Well, I don't care whether it comes off the main
11 system or whatever system you've got. I want to
12 know if there's a way to easily do a mass
13 mailing to Lewmar, Inc.'s customers?
14 A. I don't know.
15 Q. How do you mail out the catalogs?
16 A. You would have to ask Mr. Townsend.
17 Q. Do you know?
18 A. No.
19 Q. Is there any other advertising that's done
20 beyond the catalogs?
21 MR. HARRIS: Objection. Asked and
22 answered. It is also an area that Mr. Townsend
23 is designated to speak on.
24 MR. THOMPSON: All right. I will ask
25 him about it.

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1 Q. (By Mr. Thompson) What kind of reporting
2 requirements are there for American distributors
3 in terms of sales information? Anything along
4 those lines?
5 A. In terms of their sales to their customers?
6 Q. Yes.
7 A. No.
8 Q. So you don't know what your distributors do with
9 the product?
10 A. No, sir.
11 Q. And have you taken any steps at all it find out
12 what they do with it?
13 A. I am not aware of any.
14 Q. And -- well, withdraw that. Would you take a
15 look at Exhibit 300 again, sir. Is that
16 packaging, is that how the trigger latch
17 shackles are usually sent out?
18 MR. HARRIS: I object to the form of
19 the question. Lacks foundation in terms of the
20 word usually. What timeframe are we talking
21 about?
22 MR. THOMPSON: Well, let's start with
23 that particular form of packaging.
24 Q. (By Mr. Thompson) How long has that been in use
25 to your knowledge?

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1 A. Again, this is a question you should put to
2 Mr. Townsend.
3 Q. By that answer, do you mean, you do not know?
4 A. I do not know the period this packaging has been
5 used for, no.
6 Q. Has it been used to your knowledge since 1997?
7 A. I don't know, sir.
8 MR. THOMPSON: I have nothing
9 further.
10 MR. BUCHANAN: I have no questions.
11 MR. RUSSELL: No questions.
12 EXAMINATION
13 By MR. WALDECK:
14 Q. Mr. Swales, thank you very much for being here
15 today, and I'd appreciate your patience while I
16 ask you just a few more questions.
17 A. Okay.
18 Q. My name is John Waldeck, and I am an attorney
19 that represents two gentlemen that were involved
20 in assisting in putting on the wrestling event
21 that was held in the United States in Kemper
22 Arena, which is located in Kansas City,
23 Missouri. Some of the testimony that you gave
24 earlier today, I just have some follow-up
25 questions. I'm trying to get an understanding

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1 of the difference of some of the product that's
2 involved that you talked about. You talked
3 about Gibb shackles and you also talks about
4 Lewmar shackles.
5 A. Yes, sir.
6 Q. Is there a difference, since you were the CEO or
7 in charge of distributing or selling Gibb's
8 shackle at one time, is there a marketable or
9 noticeable difference in the actual product, a
10 Gibb's shackle versus a Lewmar shackle?
11 A. The look is different. Their operation in
12 relation to the trigger latch shackle is
13 different. While they both have the same
14 function.
15 Q. And if this is not a fair characterization would
16 you please let me know? The Gibb's shackles
17 that you were selling, Gibb had a higher or
18 better market position for those type of snap
19 shackles than did Lewmar?
20 A. Yes, sir.
21 Q. And is that the reason why now the Gibb shackles
22 is the product line that's used as opposed to
23 the Lewmar shackles?
24 A. Yes, sir.
25 Q. Does anyone still sell -- let me try it this

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1 way. Does Lewmar still manufacture Lewmar
2 shackles?
3 A. No, they don't.
4 Q. And that stopped in August of last year; is that
5 correct?
6 A. You need to check with Mark Gibson to precisely
7 when it stopped.
8 Q. And if you would do that during the purpose of
9 my examination, if there is a question that
10 should be directed to someone else, don't waste
11 time trying to guess it. Just say, Mr. Waldeck,
12 would you please direct that to, and I would be
13 happy to do that.
14 A. Okay.
15 Q. Thank you. You also talked a little bit about
16 wanting customers, whether they would be
17 distributors or boat manufacturers, to get
18 authority or need to get authority if they plan
19 to use a shackle for some non-marine related
20 use. Is that correct?
21 A. We sent it out to our subsidiaries, who are our
22 main distributors.
23 Q. I think I understand that, and I guess what I'm
24 trying to drive at is by sending that out,
25 saying you're not supposed to use a trigger

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1 latch shackle unless -- for a non-marine related
2 use unless you have authority contemplates
3 somehow that there would be non-marine related
4 uses where you would receive authority to use
5 that product in that capacity. Is that correct?
6 A. There are any number of uses for our products.
7 The latter was not restricted to trigger latch
8 shackles. Any number of our products could be
9 used for things outside the marine industry.
10 Some of them would be perfectly acceptable.
11 Some of them would not.
12 Q. Well, at least in authoring these memoranda and
13 circulating them out to your distributors,
14 Lewmar was at least considering or anticipating
15 that their distributors may come to them and say
16 can I have authority to sell this product or use
17 this product in a non-marine related way. Is
18 that fair?
19 A. Yes, sir.
20 Q. What specifically would be the process? Say,
21 for example, if I am a distributor of your
22 products and I wanted to take a trigger latch
23 snap shackle and send it to someone for a
24 non-marine related use. How would I go about
25 getting that approval that we're talking about?

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1 A. Our subsidiary would by the nature of who was
2 trying to buy it be aware as to whether they
3 were marine business or not. They clearly don't
4 go to Marine or Catalina or the big boat
5 builders and check what they are using the
6 products for. If somebody came along, and
7 obviously they were a non-marine business, then
8 the subsidiary should inquire as to what purpose
9 they want the product for.
10 Q. Is there some sort of criteria or system then
11 once they find out it is a non-marine use that
12 allows them to get this authority?
13 A. They would -- depends on what the use was. If
14 they are going to use it as a key ring, clearly
15 they wouldn't make a phone call. They should
16 come through to my office, and again depending
17 on what the use was, we would talk to the
18 insurers.
19 MR. ROBB: I need to move to strike
20 any reference to insurance or insurers. Under
21 our law, insurance is not a matter that comes
22 into civil litigation, so I need to move to
23 strike it. I apologize for the interruption.
24 Q. (By Mr. Waldeck) Under that scenario, who makes
25 the ultimate -- I am going to use, we use it in

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1 the United States the term "call". Whose
2 decision is it to say yes or no or make the call
3 on that authority?
4 A. It would be one of the directors of Aon.
5 Q. Are there any written policies or procedures
6 that outline this process we have described to
7 get authority for the uses of product?
8 A. Beyond these memorandums, no, sir.
9 Q. Is there any record that is kept of any
10 distributors that would contact you, or boat
11 manufacturers, that would contact you where you
12 would memorialize or record requests that they
13 made for the uses of your product that would
14 have to go through this authority process?
15 A. Since I have been finance director at Lewmar, I
16 haven't had a single request.
17 Q. Do you know if any of your -- if this is the
18 incorrect term, your subsidiary, would it be
19 managers, the person in charge of the subsidiary
20 like in Holland or the United States, have they
21 received any inquiries for authority for
22 non-marine use?
23 A. If they have, they haven't forwarded it on to
24 Havant, which would suggest if that have they
25 have been relatively minor uses.

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1 Q. And are the subsidiary, head persons of the
2 subsidiary, are they expressly directed by
3 Lewmar here in the United Kingdom to forward any
4 information relating to the request for
5 authority?
6 A. Yes, sir.
7 Q. That's part of the chain of command? They know
8 to pass on that information?
9 A. Yes, sir.
10 Q. This may not be a question to you, and please
11 tell me if it isn't. My understanding of how
12 that shackle works, if the quick release feature
13 or the release feature of that shackle is never
14 activated, that shackle is supposed to hold
15 closed. Wouldn't that be correct?
16 A. Yes.
17 Q. And it doesn't matter if that shackle is under
18 load, not under load. It's not supposed to open
19 up unless someone activates the release
20 mechanism. Isn't that correct?
21 A. That is correct, sir, yes.
22 Q. And as far as the strength of the shackle, its
23 ability to suspend weight or undergo a load,
24 those are questions that I should ask of a
25 different person. Is that correct?

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1 A. Yes. You should ask Mr. Gibson.
2 Q. Thank you. And likewise if I wanted to ask
3 about the differences in those loads and
4 abilities of a trigger latch shackle versus a
5 plunger shackle, I should also ask Mr. Gibson?
6 A. That's correct.
7 Q. Okay. You provided some testimony about steps
8 that the company had taken to provide notice to
9 the distributors after certain instances
10 occurred which caused the company to have
11 knowledge of uses that were not marine uses. Do
12 you remember that testimony?
13 A. Yes, sir.
14 Q. And in a memo I believe I saw or heard some
15 language which talked about Lewmar taking every
16 step. Do you recall that language?
17 A. Yes, sir.
18 Q. Is it your testimony that Lewmar has taken every
19 step to inform its distributor of the situation
20 of not selling trigger latch shackles for
21 non-marine uses?
22 A. We have notified all our subsidiaries that they
23 should not sell Lewmar product for non-marine
24 purposes.
25 Q. And you've done that by sending them a memo. Is

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1 that right?

2 A. That's right.

3 Q. Have you ever sent them any letters?

4 A. No.

5 Q. Has anyone from Lewmar's headquarters ever

6 called the list of customers to tell them that

7 personally?

8 A. Are we now talking about the ultimate, the

9 people we sell outside --

10 Q. Just your subsidiary managers. Have you called

11 them directly, and said do not allow these

12 products to be used for non-marine uses?

13 A. I am not aware if we have or not.

14 Q. Okay. How about any written policies of Lewmar

15 that have been distributed to all of the

16 subsidiary managers saying, do not distribute?

17 A. Again, it's on the memorandum here, the FAX.

18 Q. Does Lewmar have any system in place whereby it

19 checks the customers of the various

20 distributors?

21 A. No, sir.

22 Q. I am referring to the customer list, if you

23 could put that in front of you again, the

24 exhibit that is the customer list.

25 A. Yes.

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1 Q. We have talked a lot about Action Specialists,

2 which is on the front page, LL 0146. I want to

3 talk to you a little bit about some of the other

4 entries or customers that I see in this listing.

5 Could you turn to page LL 0173, please.

6 A. (Witness complies). Okay.

7 Q. If you go down about seven entries, there's an

8 entry where it says customer name, Pedigree

9 Cats, Inc. What is Pedigree Cats, Inc., if you

10 know?

11 A. I have not the faintest idea.

12 Q. Do you know what a company called Pedigree Cats,

13 Inc., would use your equipment for?

14 A. No, sir.

15 Q. Could you turn to the next page, which is 174,

16 the same prefix, LL 0. I am going to ask you

17 about some other names that appear on this

18 customer list. About the middle of the page,

19 and the easiest way to find it is go up from the

20 entry that stays Rhodex, R-H-O-D-E-X, up to an

21 entry, I'm reading it as customer name Rescue

22 Systems. Do you have any information about

23 Rescue Systems?

24 A. If you are asking a general questions on this,

25 you are probably better with Mr. Townsend.

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1 Q. I will do that then. I'm sorry to take up your

2 time on that.

3 Is it Mr. Townsend's job in Lewmar to have

4 knowledge or be responsible for knowing about

5 the subsidiaries' customers?

6 A. Yes. Mr. Townsend is a product manager, so he

7 works between the factory and the sales.

8 Q. Is it Lewmar's intention at any time for a

9 member of the general public to be able to

10 receive their catalog?

11 A. The marine catalogs that we see here today are

12 available at boat shows, so people can walk up

13 to the booth and pick up a catalog.

14 Q. Could I, John Waldeck, call up Lewmar Company

15 and say I'd like to get a catalog? Could I

16 obtain one that way?

17 A. Probably, yes, sir.

18 Q. And have we generally covered, to the best of

19 your knowledge as you sit here today, all of the

20 various written materials that would be

21 available to a member of the public, which would

22 inform them of Lewmar's intention only to have

23 their products used in marine capacities?

24 A. Yes, sir.

25 Q. Is there anything else out there, a document, an

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1 ad, a memo, anything like that that would

2 contain similar information that we haven't seen

3 here today?

4 A. To the best of my knowledge, all of our ads

5 relate to marine uses of our products.

6 Q. Let me shoot the question at you again to make

7 sure I'm understanding. Any documents,

8 advertisement, something in writing that

9 specifically states the products are only

10 intended to be used in marine applications, are

11 there any additional documents that we have not

12 seen today that you have knowledge of?

13 A. I have no knowledge of any others.

14 Q. You talked a little bit about not receiving any

15 requests for approvals, and I do recall your

16 testimony about that you just gave a minute ago

17 to Mr. Thompson about there was approval for the

18 use of pulling props, and that was not a

19 marine-related use. Is that correct?

20 A. That is correct.

21 Q. Do you have any knowledge of any other

22 non-marine related uses besides this pulling of

23 props that we haven't talked about?

24 A. Not for a Lewmar trigger latch shackle, no.

25 Q. And I believe again your testimony was that you

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1 don't have any way to track or verify what a
2 customer is buying a Lewmar related product for,
3 their actual end use. Is that correct?
4 A. That is correct.
5 Q. Are your distributors permitted to sell to
6 individuals?
7 A. A lot of our distributors are in business to
8 sell to individuals.
9 Q. So the customer list that has a number of names,
10 I don't think I saw -- and maybe I am missing it
11 if I did, and maybe I need to ask it of another
12 person, but I didn't see any individual names,
13 Bob Jones, Phil Smith, Pete Thompson, something
14 like that.
15 A. Sorry. I misunderstood your question. Lewmar,
16 Inc., will sell to distributors who sell on to
17 the end user, to Joe Public.
18 Q. Is that somehow different from selling to a boat
19 manufacturer? Isn't that an end user?
20 A. No. The end user is the person that buys the
21 boat.
22 Q. Okay.
23 A. Ultimately.
24 Q. Is there any written policies or procedures for
25 what information a distributor of Lewmar

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1 products is supposed to pass on to an end user,
2 your example Joe Public, when a sale is made of
3 Lewmar products?
4 A. No, there is not.
5 Q. Is there any company requirement in Lewmar for a
6 distributor to specifically tell Joe Public, the
7 end user, that the equipment that you are being
8 sold in an example, a Lewmar trigger latch
9 shackle is to be used only in marine
10 applications?
11 A. We only sell the product to marine customers.
12 You can't just go into Wal-Mart and buy any of
13 our products. So anybody that goes into a
14 marine distributor presumably is going to buy a
15 product for a marine use.
16 Q. And is that an assumption that Lewmar is making,
17 that anyone who walks into a marine distributor
18 store is there for the purpose of buying
19 something it use for a marine application?
20 A. I'm sure there are cases when that isn't the
21 case, but the vast majority of the time, yes,
22 that is true.
23 MR. WALDECK: Sir, again, I
24 appreciate your time. I don't have any further
25 questions at this time. Thank you very much.

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1 (Recess).
2 EXAMINATION
3 By MR. SULLIVAN:
4 Q. Mr. Swales, my name is Kent Sullivan. I
5 represent a Mr. Bobby Talbert and a Mr. Matt
6 Allmen, both defendants in this action. I would
7 like to ask you just a very few follow-up
8 questions.
9 With regards to the incident involving the
10 bungee jumper, which is referenced initially in
11 Exhibit 124, who amongst the three individuals
12 that are going to be produced here for
13 depositions, Mr. Townsend, yourself and
14 Mr. Gibson, would be most knowledgeable about
15 that incident?
16 A. I believe Mr. Gibson.
17 Q. All right. We will ask him, then, about that
18 incident. Sir, you have in front of you, I
19 believe it was referenced initially as Exhibit
20 10, the trigger latch shackle?
21 A. Yes.
22 Q. And then the other item, which I don't think has
23 an exhibit number.
24 MR. WALDECK: 76.
25 Q. (By Mr. Sullivan) Exhibit 76, I'm sorry. And

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1 again how do you reference the stick-like
2 device?
3 A. We would call it a fid.
4 Q. I'm sorry?
5 A. F-I-D.
6 Q. F-I-T?
7 A. F-I-D.
8 Q. All right. Can we agree, sir, that there are
9 three different ways to open that snap shackle?
10 A. Yes, sir.
11 Q. All right. And would you please demonstrate
12 each of the three methods.
13 A. Your finger inside and squeeze.
14 Q. When would you contemplate that use being made
15 of the trigger shackle to be opened?
16 A. You ought to refer questions of use to
17 Mr. Townsend.
18 Q. All right.
19 A. I can show you how it works.
20 Q. All right. What is the second method of opening
21 it?
22 A. Put the fid in.
23 Q. All right. What is the third method?
24 A. To pull the ring, which is quite hard.
25 Q. I believe, sir, you did indicate in your earlier

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1 testimony that in your mind it would be
2 dangerous to open it in any fashion if under
3 load except using the fid?
4 A. Yes.
5 Q. Is that correct?
6 A. That's correct.
7 Q. And what is the danger that exists if you use
8 any method of opening that shackle other than
9 the fid if it's under load?
10 A. Okay. Again, you have got to ask Mr. Townsend,
11 but because there is strain between the two,
12 when it opens, but naturally it moves sharply.
13 Anything else around it is going to move
14 sharply, so there is a danger of getting caught
15 by it.
16 Q. So the danger of using any other method of
17 opening is perhaps having your hand struck if
18 you are within the range of that shackle?
19 A. Yes.
20 Q. Flying open; is that correct?
21 MR. ROBB: Let me object to the form
22 of the question to the extent that postulates
23 only a marine application, not an improper stunt
24 use. You may answer to any extent you are
25 limiting it to marine application, of course.

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1 Q. (By Mr. Sullivan) Earlier when you gave your
2 answer when you said it would be dangerous to
3 use, I'm sorry, dangerous to open this shackle
4 under load by any method other than using the
5 fid, were you contemplating just a marine
6 application?
7 A. Oh, yes. This was only designed for a marine
8 application.
9 Q. Your answer was limited to the marine
10 application?
11 A. That's correct.
12 Q. And no other application?
13 A. No.
14 Q. You would be unqualified to give any opinion
15 with regards to the danger of opening that
16 shackle in any fashion other than with the fid
17 if it was under load except in the marine
18 application; is that correct?
19 MR. ROBB: Object to the form of the
20 question to the extent that he cannot self-judge
21 his own qualifications. That would be for a
22 Missouri court on the basis of his education and
23 training and experience, and to the extent he
24 feels he is qualified, he may answer.
25 Q. (By Mr. Sullivan) Do you feel, sir, you are

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1 qualified in your qualifications to answer with
2 regard to the danger of opening that shackle
3 under load in any manner other than using the
4 fid to marine applications?
5 MR. ROBB: Same objection to the
6 extent that you are calling him essentially to
7 judge his own qualifications. I don't think
8 that's for the witness, but you may answer if
9 you understand.
10 A. This product shouldn't be opened with anything
11 other than the fid when it's under load.
12 Q. (By Mr. Sullivan) And are you limiting that
13 answer to a marine application?
14 A. I'm not aware that that answer would change for
15 any other application. This is only designed
16 for marine application.
17 Q. All right. Sir, I have given to you Exhibit
18 303. It makes reference to Action Specialists
19 as a tech center.
20 A. Yes.
21 Q. Do you know what that reference refers to, tech
22 center?
23 A. No, I don't.
24 Q. Am I correct in my understanding, sir, that you
25 basically draw a distinction between a marine

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1 application and a non-marine application? Is
2 that correct?
3 MR. ROBB: I object in terms of for
4 what purpose. I presume we are talking about
5 for use of the trigger latch shackle. Didn't
6 state it, but I assume that to be the case.
7 MR. SULLIVAN: Yes.
8 Q. (By Mr. Sullivan) In using the marine -- I'm
9 sorry. In using the trigger latch shackle as
10 far as applications, you categorize them as
11 either marine or non-marine. Is that correct?
12 A. Yes, sir.
13 Q. And if you are selling that shackle to one of
14 the customers that's listed on the Exhibit 304
15 that you believe to be a marine supplier of
16 product, you don't check any further to see what
17 they actually do by way of use of that shackle;
18 is that correct?
19 A. That is correct, sir.
20 MR. SULLIVAN: I have no other
21 questions.
22 MR. ROBB: I believe it's Lewmar's
23 turn.
24 MR. HARRIS: There will be no
25 questions from Lewmar at this point.

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1 MR. ROBB: Then I guess that evolves
2 back to us. Could we take one minute and just
3 do a quick change.
4 (Off the record).
5 RE-EXAMINATION
6 By MR. ROBB:
7 Q. Good afternoon, Mr. Swales.
8 A. Good afternoon.
9 Q. You started out with me, and you got me again,
10 Gary Robb on behalf of the family, and I have
11 some more questions for you if you are ready to
12 proceed.
13 A. Okay.
14 Q. Now, you are now and have been since the time
15 you came on with Lewmar the finance director.
16 Is that correct?
17 A. That is correct.
18 Q. And, in fact, there is no other finance
19 director. True?
20 A. That is true.
21 Q. And as the finance director, you are the
22 individual at the company with ultimate
23 responsibility for the commercial aspects of the
24 company, finances and so forth. Would that be
25 correct?

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1 A. The financial aspects, yes.
2 Q. And that would be you?
3 A. Yes.
4 Q. Now, in terms of the financial aspects of the
5 company, that would include the commercial
6 applications of a particular product which you
7 would know the financial implications. Correct?
8 A. The financial implications, not necessarily all
9 the commercial implications.
10 Q. But as the finance director and the sole person
11 in charge of that aspect for the company, you
12 would have knowledge of the uses and intended
13 uses of a particular product such as Plaintiff's
14 Exhibit 10, the trigger latch shackle. Correct?
15 A. Yes, sir.
16 Q. And wouldn't you consider yourself, Mr. Swales,
17 to be sufficiently qualified by reason of your
18 position with the company and your experience to
19 give opinions concerning the proper use and
20 intended use of this product in?
21 MR. THOMPSON: Object to the form of
22 the question.
23 A. Yes, I do, sir.
24 Q. (By Mr. Robb) Okay. Now, Mr. Swales, to the
25 best of your knowledge, and I'm talking about

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1 your knowledge, in your capacity as the finance
2 director, not what you may have learned in the
3 last several weeks or months but your ongoing
4 knowledge that you have gained in the ordinary
5 course and scope of your business, to the best
6 of your knowledge in that capacity do the United
7 States distributors to whom you sell your
8 product know that it is to be used for marine
9 application only, sir?
10 MR. WALDECK: I object to the form of
11 the question.
12 MR. THOMPSON: I object to the form
13 of the question. Calls for speculation.
14 Q. (By Mr. Robb) You may answer.
15 A. Yes. To the best of my knowledge, they know
16 that our products are only to be sold in marine
17 application.
18 Q. Now the distributors to your knowledge don't
19 require customers to swear to a particular use
20 of the product, do they, sir?
21 MR. WALDECK: Objection, speculation.
22 MR. THOMPSON: Same objection.
23 A. Not to my knowledge.
24 Q. (By Mr. Robb) Now, if they did, you would know
25 about it, wouldn't you?

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1 MR. THOMPSON: I object to the form
2 of the question.
3 MR. WALDECK: Same objection.
4 A. Yes, they do.
5 Q. (By Mr. Robb) As the finance director you would
6 know if they did it, right?
7 A. Yes, sir.
8 Q. So if someone picks it off the shelf of a store
9 that may have purchased it from a distributor,
10 there is no requirement either by the
11 distributor or Lewmar that they swear to a
12 particular limited use of any particular Lewmar
13 product. True?
14 A. That is true, sir.
15 Q. And Lewmar doesn't and, in fact, can't police
16 the ultimate or final uses of a trigger latch
17 shackle, can it, sir?
18 MR. THOMPSON: I object to the form
19 of the question as compound.
20 MR. RUSSELL: Asked and answered.
21 MR. WALDECK: I object to form.
22 Q. (By Mr. Robb) Subject to the objection as if
23 stated at the end of this question, let me just
24 put it to you again so we can have a smooth
25 record. And Lewmar certainly cannot police

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1 every ultimate or final use of a trigger latch
2 shackle. Correct?
3 A. That is correct, sir.
4 Q. Now, the lawyer for the WWF, Mr. Thompson, asked
5 you, sir, a few moments ago and asked if you
6 recall if he asked about whether it would be
7 lunacy to use a trigger latch shackle in a
8 bungee jump. Do you recall those questions,
9 sir?
10 A. Yes, I do.
11 Q. And you felt qualified and are qualified to
12 answer them, aren't you?
13 A. Yes, sir.
14 Q. Let me ask you, sir, along those same lines as
15 the WWF counsel asked you. Would it also in
16 your experience as the finance director for
17 Lewmar be lunacy to use the trigger latch
18 shackle to suspend a 235-pound man 78 feet above
19 the ground?
20 MR. SULLIVAN: I object to the form
21 of the question.
22 MR. THOMPSON: Same objection.
23 MR. SULLIVAN: Lack of foundation.
24 Q. (By Mr. Robb) Just one second. You may answer.
25 A. I wouldn't use the phrase lunacy, but I would

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1 say it was a totally inappropriate use of the
2 product.
3 Q. A totally inappropriate use of the product you
4 say?
5 A. Yes, sir.
6 MR. ROBB: Mr. Swales, I thank you
7 for your time, for your patience, and on behalf
8 of the plaintiffs, I have no further questions.
9 THE WITNESS: Thank you.
10 MR. THOMPSON: I have a few follow-up
11 questions. If you want to just hand the mike to
12 me, I can do it from here. And I need the
13 exhibits, please, a couple of them.
14 RE-EXAMINATION
15 By MR. THOMPSON:
16 Q. Mr. Swales, are you aware of any reason why
17 Lewmar could not have, if it wanted to, have
18 stamped "marine use only" on those trigger latch
19 shackles?
20 A. There may be technical reasons why it couldn't
21 go on. I don't know.
22 Q. Well, actually, in fact, at one point you had
23 something stamped on both sides. Is that
24 correct?
25 A. That is correct.

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1 Q. So are you aware as you sit here today of any
2 reason why the words "marine use only" could not
3 have been stamped on that trigger latch shackle?
4 A. I'm not aware of any.
5 Q. In Exhibit 124, which was the -- let me pass
6 that to the witness. Does Lewmar only have one
7 insurer for the whole company?
8 A. In what respect?
9 Q. Well, in the respect that it references insurers
10 in Exhibit 124, would that have been Aon?
11 A. Aon are our insurance brokers. We use a number
12 of insurance companies.
13 MR. ROBB: Excuse me Bob. I don't
14 want to interrupt at all, but could I just have
15 the same continuing objection and the continuing
16 motion to strike any reference to insurance or
17 insurers throughout this portion of your exam?
18 MR. THOMPSON: Yes.
19 MR. ROBB: Thank you, sir.
20 Q. (By Mr. Thompson) Do you know if the Exhibit 124
21 and the non-marine applications memo that went
22 out with it, Exhibit 125, was provided to
23 executives at Lewmar Marine, I think, at the
24 time it was Lewmar Marine, now Lewmar Limited,
25 prior to it being sent out by your Dutch

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1 division?
2 A. I do not know.
3 Q. You don't know one way or the other?
4 A. No.
5 Q. Okay. Now, are we in agreement that the notice
6 that was sent out by Helen Holt, who is now Ms.
7 Watts?
8 A. Watts.
9 Q. On 16 June 1999, and that's Exhibit 246, that
10 was sent out after Mr. Hart's accident. Is that
11 correct?
12 A. That is correct, yes.
13 Q. So whoever got -- the only people that received
14 any notice of the intent of the company to
15 restrict use of the trigger latch shackle to
16 marine applications prior to Mr. Hart's death
17 was through 120 -- Exhibit 124 and 125. Is that
18 correct?
19 MR. ROBB: Well, I object to the form
20 of the question to the extent that it ignores
21 the catalog and terms in the catalog on the
22 terms and conditions, and I think itself limits
23 this witness from giving a full and complete
24 answer and to that extent is improper.
25 Q. (By Mr. Thompson) Let me rephrase to address

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1 the objection. The only reference of marine use
2 by virtue of the catalogs is by implication in
3 that it's a marine catalog. Is that correct?
4 A. It is a marine catalog, and there is the
5 comments in the back, intended use.
6 Q. And it doesn't list intended uses; it just says
7 that you only have a warranty if you use this
8 product for its intended use, but it doesn't
9 identify what those intended uses are. Is that
10 correct?
11 A. Except that it is a marine catalog, so I think
12 it is unlikely you would be selling it for
13 anything other than a marine purpose.
14 Q. Okay. And to that extent it is by implication?
15 A. Right.
16 Q. But not an expressed warning?
17 A. Correct.
18 Q. So except for the implication in the marine
19 catalog and the letter that was sent out by the
20 Dutch subsidiary, no one -- well, are you aware
21 of any express warnings that occurred but with
22 the exception of the letter sent out by the
23 Dutch subsidiary prior to Mr. Hart's death?
24 MR. ROBB: I object to the form of
25 the question to the extent it postulates that

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1 such a warning would be necessary. I mean, you
2 don't need to warn somebody this a lawn mower
3 not to be used as a hedge trimmer, so to that
4 extent it postulates improper contention for
5 these set of facts.
6 MR. THOMPSON: Move to strike the
7 speaking objection.
8 MR. HARRIS: Lacks foundation,
9 misleading and confusing. Are we talking about
10 a verbal discussion, written discussion? Are we
11 talking about to the Lewmar subsidiaries? Are
12 we talking about to the Lewmar customer list?
13 It's unclear as to who we are talking about so
14 it is vague and ambiguous.
15 MR. ROBB: Plaintiffs expressly join
16 the objection as stated by counsel for Lewmar.
17 Q. (By Mr. Thompson) Sir, let's back that down and
18 do it by category. Are you aware of any verbal
19 warnings prior -- at any time to users of the
20 trigger latch shackles that they should be
21 limited to marine application?
22 MR. ROBB: I just need to interpose
23 an objection to the extent it postulates that
24 there is some legal responsibility by Lewmar or
25 any of its subsidiaries or distributors to enter

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1 into any such warning where it is self-obvious
2 and an obvious danger and would not normally be
3 necessary.
4 MR. HARRIS: I am going to
5 specifically join in that objection.
6 Q. (By Mr. Thompson) Subject to the objection, are
7 you aware of any express verbal warning to any
8 customer?
9 A. I mentioned earlier to you about the discussion
10 in a meeting. I am not aware of any other
11 written instructions.
12 MR. ROBB: This was the 1998
13 discussion, sir?
14 THE WITNESS: That's right.
15 Q. (By Mr. Thompson) There was an internal
16 discussion; is that correct?
17 A. Yes.
18 Q. And so my question is, are you aware of any
19 external discussion in which the people that
20 were going to buy and use the product were
21 orally advised that they shouldn't do that
22 except in connection with a marine application?
23 MR. ROBB: I am going to also object
24 to the extent it lacks the foundation that he
25 may or may not know what an individual

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1 distributor may or may not have said at any
2 individual time to any ultimate end user. He
3 doesn't have contact with the end user, so I
4 think it is unfair. It postulates a set of
5 facts which make it impossible for him to
6 answer. It is misleading to boot and calls for
7 speculation.
8 MR. THOMPSON: The proper objection
9 is as to form and --
10 MR. ROBB: I think those are as to
11 form.
12 MR. HARRIS: Again, we are talking
13 about an area that Matthew Townsend was
14 designated to respond to.
15 Q. (By Mr. Thompson) Sir, are you aware of any such
16 oral communication?
17 A. I am not aware of any communication.
18 Q. Are you aware of any direct written
19 communication with any clients other than the
20 Dutch subsidiary in 1996?
21 A. I am not.
22 Q. Are you aware of any efforts by anybody at
23 Lewmar Limited to follow up and see if the
24 notice that was provided in 1996 to the Dutch
25 subsidiary was then provided to the subsidiary's

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1 customers?

2 MR. ROBB: Same objection as before

3 to the extent that the wording of that question

4 postulates a legal responsibility on behalf of

5 Lewmar where there, under these circumstances,

6 would be none. It calls for speculation to the

7 extent the witness has not been given any

8 indication that he has personal knowledge about

9 what distributors may have said to an ultimate

10 or end user. And on this record there is no

11 situation that Mr. Swales or anybody else on

12 behalf of Lewmar has had any contact with an

13 ultimate or end user.

14 MR. HARRIS: Same objections.

15 Q. (By Mr. Thompson) Do you know, sir?

16 A. Well, the statement on this note says that it

17 was supplied to Holland's agents. Can I just --

18 MR. ROBB: Don't interrupt a witness

19 once he has begun an answer.

20 A. Can I just make one point, that I use the words

21 agent and distributors the same. Agent just

22 does not have the legal meaning an agent in the

23 U.S.A. has.

24 Q. (By Mr. Thompson) Do you know if anyone at

25 Lewmar Limited followed up to see that that was

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1 actually done, that that went to the agents and

2 distributors?

3 A. Beyond the fact that it says so on it, I do not

4 know.

5 Q. Would you hand me 246, please.

6 MR. ROBB: And for the record does

7 someone have exhibits -- do you have those there

8 handy? I want to look at those. Those are the

9 ones that we marked as Plaintiff's 38 -- I'm

10 sorry, 29 and 30 and 31 and 124 and 125, 126. I

11 just don't want to get them mixed up in your

12 stuff.

13 MR. THOMPSON: They are all right

14 here.

15 MR. ROBB: Could I look at those for

16 a second?

17 MR. THOMPSON: Yes.

18 MR. ROBB: Thank you very much.

19 Q. (By Mr. Thompson) 246 is the notice that was

20 provided to all the subsidiaries after you

21 became aware of Mr. Hart's death; is that

22 correct?

23 A. Yes.

24 Q. And are you aware of whether the subsidiaries

25 have done anything to provide notice to their

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1 distributors and agents that sales should be

2 limited to marine applications?

3 MR. ROBB: Objection, indefinite as

4 to time. Go ahead and answer.

5 A. I'm not aware.

6 Q. (By Mr. Thompson) You are not aware?

7 A. No.

8 MR. THOMPSON: Thank you, sir.

9 MR. ROBB: Let me make sure we have

10 on the record everybody has no further

11 questions. Mr. Russell?

12 MR. RUSSELL: No questions.

13 MR. BUCHANAN: No further questions.

14 MR. WALDECK: No further questions.

15 It's John Waldeck.

16 MR. SULLIVAN: No further questions.

17 MR. THOMPSON: No further questions

18 of this witness.

19 MR. ROBB: No further questions on

20 behalf of plaintiffs.

21 THE REPORTER: What do you want to do

22 about signature?

23 MR. HARRIS: Send it to me, and I

24 will get it to Mr. Swales.

25 (The witness was excused).

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6 I, , am a citizen of

7 , and I reside at

8

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10

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12

13 Subscribed and sworn to before me

14 this day of ,

15 20 .

16 My commission expires .

17

18

19 NOTARY PUBLIC

20 IN RE: HART VS. WWF, ET AL.

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1 NOTARIAL CERTIFICATE

2

3 STATE OF MISSOURI }
4 COUNTY OF RAY } SS.

5 I, SAUNDRA A. MILLER, a Notary Public, do
6 hereby certify that pursuant to Notice, at the law
7 offices of Bryan Cave, 33 Cannon Street, in London,
8 England,

9 MARK SWALES,

10 came before me and was duly sworn to testify the whole
11 truth of his knowledge of the matters in controversy
12 aforesaid, was examined and his examination then
13 written in shorthand by me and afterwards typed.
14 presentment of the deposition for the signature of the
15 witness was expressly waived by counsel, on the day in
16 that behalf aforesaid; and said deposition is herewith
17 returned.

18 I further certify that I am not counsel,
19 attorney or relative of either party, or clerk or
20 stenographer of either party or otherwise interested
21 in the event of this suit.

22 IN TESTIMONY WHEREOF I have hereunto set
23 my hand and affixed my notarial seal at my office in
24 said County and State, this day of ,
25 2000.

My commission expires February 1, 2002.

Notary Public

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5 Saundra A. Miller

6 Notary Public State of Missouri

7 My Commission expires: February 1,

8 2001.

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1 IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
2 AT KANSAS CITY

3 MARTHA HART, et al.,
4 Plaintiffs,
5 vs. No. CV99-210774
6 WORLD WRESTLING FEDERATION,
7 et al.,
8 Defendants.

9 REPORTER'S CERTIFICATE

10 I hereby certify that the original
11 Deposition of Mark Swales, taken on behalf of the
12 Plaintiffs, on April 10, 2000, is in the custody
13 of Gary C. Robb, Robb & Robb, 3900 One Kansas City
14 Place, 1200 Main Street, Kansas City, Missouri, 64105.

15 The cost taxed is \$ pending payment
16 by the Plaintiffs.

17 The cost taxed is \$ pending payment
18 by the Defendants WWF and McMahon.

19 The cost taxed is \$ pending payment
20 by the Defendants Lewmar.

21 The cost taxed is \$ pending payment
22 by the Defendant Lift-All.

23 The cost taxed is \$ pending payment
24 by the Defendants Williams and Vizzani.

25 The cost taxed is \$ pending payment
by the Defendants Talbert and Allmen.

The cost taxed is \$ pending payment
by the Defendant Kansas City, Missouri.

<p>-\$-</p> <p>\$ [7] 198:15,17,18,20,21 198:23,24</p> <p>-&-</p> <p>& [13] 1:22,29 2:2,13,19 2:24,29,33 144:14 145:17 146:20 154:8 198:13</p> <p>-'-</p> <p>'47 [1] 11:25 '78 [3] 44:2,20,23 '79 [1] 44:2 '85 [3] 44:2,21,23 '95 [1] 43:22 '96 [1] 101:2 '97 [2] 98:23 101:2 '98 [3] 90:5 101:1 138:16 '99 [2] 90:5 101:1 's [1] 159:13</p> <p>-2-</p> <p>, [1] 196:7</p> <p>-0-</p> <p>0 [3] 132:15,16 170:16 00012 [1] 145:8 000196 [1] 136:14 001 [1] 132:9 01 [2] 132:15,16 0144 [1] 29:5 0146 [3] 130:20,21 131:10 132:8 170:2 0173 [2] 142:1 170:5 0179 [1] 144:1 0190 [1] 130:21 0215 [1] 124:16 0217 [1] 127:14 0218 [2] 6:13 33:18</p> <p>-1-</p> <p>1 [7] 5:14,16 35:1,2 135:5 197:17 199:7 1/7/99 [1] 59:5 10 [3] 1:17 3:12 10:1 12:14,17,20 16:7 40:20 48:21 49:5,12,16,21 50:5 50:14 51:19 53:5 54:7,22 97:13,22 98:10,25,25 99:19 104:3 123:8 141:3 175:20 182:14 198:12 11 [2] 5:17 8:2 11/9/96 [1] 59:3 1100 [1] 2:21 12 [2] 3:12 5:14 120 [3] 2:26 3:21 188:17 1200 [3] 1:31 2:9 198:14</p>	<p>122 [1] 3:22 124 [32] 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